93-713

Supreme Court, U.S.
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CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GARY G. GRAHAM,
Petitioner,

versus

THE FLORIDA SUPREME COURT, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE FLORIDA SUPREME COURT

APPENDIX
VOLUME FOUR

Michael L. Kinney *
3128 West Kennedy Blvd.
Tampa, FL 33609-3093
(813) 878-5445

Gary G. Graham
407 Courthouse Square
Inverness, FL 34450
(904) 637-2637

*Counsel for Petitioner

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For reasons related to printing logistice, Volume Six may not be printed. If printed the index will be found at the beginning thereto.

Swigert appointed Respondent to the Jail Release Committee without talking to him. Fortunately, Respondent had on a prior occasion discussed the subject of Jail Release Committees with Judge Oliver Green of the Committee on Standards of Conduct Governing Judges. At that time Green had advised Respondent that he believed there were some very serious ethical problems with these types of committees unless they were very carefully structured.

The Jail Release Committee as created by Swigert consisted of 3 members, Roberta Moffatt (Dean's jail administrator), King, and Skip Babb (the Public Defender). When the jail reaches a population of 178 inmates, Moffatt calls a meeting.

Moffatt, King, and Babb (or their appointed substitutes) then review the files of all the inmates including criteria such as their previous criminal records, their ties to the community, the severity of the charge and their attitude in jail. Thus each case is determined individually and on the merits of the nature of the offense, the defendant's record, and his attitude. In other words, the Jail Release Committee substitutes their judgment on the relative sentences of the inmates in place of the sentencing Judge's

judgment. This procedure is radically different from those which provide for

release of all inmates who have served a specified percentage of their sentence or otherwise release prisoners on criteria which do not involve the facts of the inmates' individual cases.

With Sheriff Dean present Respondent contacted Acting Chief Judge Victor Musleh on his speaker phone and discussed this plan with him. He shared with Musleh the numerous flaws explained to Respondent by Judge Green, two of which were particularly serious. First, the meetings were ex parte hearings on the merits without the defendant's presence and without notice. Secondly, defendants represented by the Public Defender had legal assistance but those having private counsel or none at all were not represented.

With these considerations in mind, I informed Judge Musleh that I would not serve on the Jail Release Committee and explained to him my reasons.

Respondent then had a discussion with Dean about the situation and asked him if his conscience wouldn't bother him if he

released someone before being rehabilitated and they hurt someone. He said no, that he must have a different conscience than Respondent. Respondent agreed.

Dean subsequently lied in the newspapers saying he had no idea why Respondent would not serve on the Jail Release Committee. He also stated that in the past when he had inmate population problems **he didn't have any problems with Damron letting people out**. (Ex 148, p 2, column 2, paragraph 3)

On several occasions Edwards contacted Respondent regarding "input" into these release decisions. (Ex 88) To protect himself, Respondent was forced to put his objections in writing to Edwards and ask him point-blank not to ask for any participation. (Ex 89)

Again, because Respondent stood up for the independence of the County Court, the newspapers based him. (Ex 90)

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Dean then **initiated** a further confrontation with Respondent by ordering the bailiff to leave the Courthouse unguarded at the end of Court proceedings. This was a dramatic and abrupt change from Dean's procedure for the past seven years.

Respondent discussed the problem with Edwards explaining to him that Dean was in effect saying be lenient, reduce the jail population, or I will in effect put a loaded gun to your head by withdrawing Courthouse security. Edwards said, "Gee, I know Charlie. If he wanted to hurt you,

he would just take out a gun and shoot you."

Respondent wrote Dean explaining to him the danger associated with leaving the Courthouse unguarded. Despite the fact that one can get a pizza delivered in Citrus County faster than a 911 response, (Ex 91A,91B) Dean responded by instructing the Court to "Call 911". (Ex 92)

When the bailiff refused to follow instructions to leave the Courthouse unguarded **without notifying the Judge he was leaving**, he was transferred from his Court duty to jail duty and quit his job in disgust. (Ex 93)

When Respondent let the County Commission know that he would be requesting a full-time security guard for the County Court in his next budget, the newspapers again sided with Dean adopting his characterization of a full-time Courthouse security guard as a "valet to Judge Graham". (Ex 94)

Neither Dean nor the newspaper explained why they did not have similar objections to the **four** full-time security guards and high tech x-ray and metal detection equipment provided by Dean to protect Thurman and Edwards.

The County Commission granted Respondent's request over the

objection of Dean, the County Administrator, and the newspapers. (Ex 95)

This confrontation surrounding the Respondent's efforts to obtain court security was at one stage of the proceedings actually charged against the Respondent as an **abuse** of his office. ( ) The Commission later abandoned this charge when it became apparent how silly it was.

Afterwards Dean continued to insist on sending a Sheriff's bailiff to **all** Court proceedings (including small claims cases). When questioned about this he said that the law required it. Actually, the law requires a Sheriff to appear at each **term** of Court, not each **session**. When the County Court bailiff offered to

be deputized to avoid the unnecessary duplication, the Sheriff refused.

Two ex-deputy sheriffs who were bailiffs under Dean have reported that they were instructed to be the "eyes and ears of the Sheriff's Department" in Citrus County Court. This intelligence gathering mission costs the citizens of Citrus County over $20,000.00 per year. Respondent suspects that many of the charges filed against him are the result of this "monitoring". (Ex 133, especially Ex 134 which appears to be the source of Formal Charge Number 2K)

Respondent then became involved in yet another confrontation with Dean when Steven Webb, a Defendant charged with a second DUI offense in just 2 years was released without bond because he had been doing free car work for an investigator in the Sheriff's Department (Ex 96,97,98)

Dean then filed a complaint **against himself** with his friend King who promptly exonerated Dean. (Ex 99) Respondent thanked King for his investigation and asked him to publish his report as widely as possible so that defendants with friends in the Sheriff's

Department would know the proper procedure for getting released from jail. (Ex 100)

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This case precisely demonstrates the politics and favoritism in the legal system which both the public and the Respondent are sick of. Despite the fact that Respondent was twice elected to eliminate this conduct from the Citrus County Court, the Commission has found the Respondent guilty of unethical conduct for punishing Webb for his complicity in this conduct.

In a similar occurrence King's brother was "unbooked" in Tavares for DUI and released on his own recognizance on a drug offense on May 21, 1992. (Ex 101) The booking personnel must have read King's procedure for the proper handling of important people, their friends, and their relatives.

The newspapers having failed to defeat Respondent at the polls and having failed to get the Commission's attention through local editorials decided that a front-page, statewide feature story was needed. (Ex 102) When Respondent saw this article with quotes from Thurman that Judge Graham was "crazy" and quotes from Edwards that Graham "shouldn't be a Judge" he knew that it

was only a matter of time before Commission papers would be received in the mail.

This feature story was titled the "Caped Crusader" because Respondent at one time has a small Batman decal in the rear window of his car. Strangely enough the newspapers have ignored the fact that Edwards has driven around Citrus County for years in a little red pickup truck with a

front license tag bearing the picture of a raccoon with lifted tail exposing his bottom in vulgar detail with a caption of "Registered Coon Ass". (Ex 103) Respondent has had two separate individuals bring this to his attention and can only wonder how the Times would style a feature story on Edwards.

However, the twisted and unfair treatment of Respondent with respect to such trivial matters has been a routine practice including news reports ranging from criticisms as wide-ranging as his surfing habits to how close he dances to his girl friend and how many diet

cokes he drinks before driving home. (Ex 104,105)

Respondent's experience over the past 8 years is best summarized in his written statement to the Commission which is reprinted here:

STATEMENT

Pursuant to FJQCR Rule 6(b), the undersigned in response to the Amended Notice of Investigation in this cause does hereby submit this his written statement refuting the alleged misconduct.

When I was elected the County Court Judge for Citrus County, I accepted the stewardship of a Court system which had in the words of the Judicial Qualifications Commission been "irreparably damaged" by over a decade of misconduct by our previous elected judge. (In Re Inquiry Concerning Judge Damron, 487 So.2d 1, 6-7, Florida Sup. Court 1986.)

I chose to believe everything the JQC wrote in their report except the conclusion that the system was irreparable. I then set my mind to the task of reforming the Citrus County Court despite the overwhelming opposition of those who supported and endorsed that corrupt judge, and who in many instances participated in and were benefitted by his misconduct, and who in one way or another are involved in or related to the complaints which have now been filed against me.

Through great sacrifice and hard work I have succeeded in returning to the people of Citrus County a decent, honest, open Court free of politics, favoritism, and friendship. To accomplish this required strict compliance with the positive ethical obligations of the office of a judge. Specifically, I have had to protect the independence and integrity of the Court by maintaining and enforcing high standards of conduct, by insisting on proceedings which promoted public confidence in the judiciary by maintaining order and decorum in the Court, and by taking disciplinary action against those who have engaged in unprofessional conduct.

Unfortunately I have learned that when you stand up for what is right in a local legal system which has been irreparably damaged by a prior corrupt judge that you often stand on the toes of those who either tolerated, benefitted from or approved of his conduct.

These individuals include both Circuit Judges for Citrus County, the State Attorney, and the Citrus County Sheriff.

The charges which have been filed against me have not been filed because I am unethical but because I am ethical. They are not filed because I am a bad judge but because I am a good judge. They are not filed because I have done wrong but because I have persisted in standing up for what is right. They are filed against me because I have refused to cooperate and become a part of the deplorable system I am fighting.

I know that I have been categorized by my political

enemies as being bizarre, unethical, and erratic. However, when you hear both sides of the story, you will understand that I am an honest, sensible, straight-talking judge caught up in a bizarre, unethical, and erratic small county legal system rife with petty, vindictive politics, bent on revenging the ouster of Leonard Damron and dedicated to the replacement of myself with someone who will once again run the County Court to the satisfaction of the attorneys, judges, sheriff, and newspaper editors.

The people of Citrus County who for over eight years have watched firsthand this struggle for the reform of their Court already understand this and rewarded my efforts by overwhelmingly reelecting me to public office despite four years of microscopic and hostile examination of my every move as a County Judge.

The complaints which have been filed against me are filed by those who are disappointed in that democratic decision. The complaints which have been filed are unfounded. I deny any unethical conduct in the due administration of justice in the Citrus County Court. I request that formal charges on each and every complaint be filed and that we proceed to a trial of these complaints in Citrus County, Florida.

I further request at the conclusion of these proceedings that the Commission commend me for the courage and dedication I have demonstrated in defending the independence and integrity of the judiciary, and that it recommend to the Florida Supreme Court those remedial actions necessary to correct the problems of the Citrus County legal system.

Respectfully submitted,

As a result of the above-stated background, the local Bar, the local press, the local politicians, and the Sheriff do not like him and want his removal.

The attorneys want him out because he won't have secret pretrial conferences, he won't rubber-stamp their plea bargains, and he won't tolerate misconduct in Court.

The local press wants him out because he won't let defendants come to Court drunk, cursing, or lying. He won't let them win all of their cases in Small

Claims Court and he won't fine anyone $350.00 for stealing a 50¢ newspaper.

The local politicians want him out because on two occasions

he has put their children in jail (County Commissioner Skip Hudson's son was sentenced to 30 days in jail when during sentencing he told the Court that it was none of its business who he bought his dope from, and County Commissioner Alex Griffin's daughter was sentenced to jail when she violated probation for

willful and wanton reckless driving and refused to offer any reason for her violation.

Circuit Judge Thurman wants him out because he won't let him exercise illegal jurisdiction over misdemeanor jail sentences or be vulgar in Court.

Circuit Judge Edwards wants him out because he won't let him forget his part in the Damron debacle, won't let him build million dollar Court facilities without the public's knowledge, and won't excuse his friends from jury duty.

Sheriff Dean wants him out because he won't let criminals out of jail to solve his jail under spacing problems, won't let him build million dollar Court facilities without the public's knowledge, and won't let him release defendants from jail because they have friends in the Sheriff's Department.

State Attorney King wants him out because he won't let him be rude in Court or lax in the filing of informations, he will not let felony defendants be prosecuted in misdemeanor Court without some explanation, and he helped defeat his buddy Gordon Oldham in the 1984 election.

The newspapers have placed Respondent under a hostile, twisted, warped, and microscopic examination including numerous vicious editorials based on one side of the story, and calling on many occasions for the Commission to remove him. (Ex 107)

The people of Citrus County however have overwhelmingly reelected him despite the united opposition of the aforementioned groups and want him to stay. (Ex 108A, pre-complaint letters of support, Ex

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108C post-complaint letters of support, Ex 108C post complaint demonstrations of support, Ex 108D post-hearing letters of support)

This case will decide who chooses the trial judges in the State of Florida, whether it will be the attorneys, politicians and big shots or the People. If the former we will be doomed to a judiciary rife with cowards constantly looking over their shoulders at the Commission afraid to speak out against misconduct. If the latter we will encourage the continued participation of brave men willing to stand up for the independence and integrity of our courts.

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CONCLUSION

Justice Ervin had this to say about the very first ethics case filed by the Florida Judicial Qualifications Commission:

This is not the first case in American jurisprudence involving public criticism of the judiciary. Other courts have clearly set out the boundaries within which critics must remain. Fortunately for our democratic society, these boundaries are wide.

Before any man may be punished for speech in a newspaper critical of the courts, the record must show that his criticism has created a clear and present danger of disrupting the administration of justice. Wood v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962); Craig v. Harney, 331 U.S. 367, 67 S.Ct. 1249, 91 L.Ed. 1546 (1946); Pennekamp v. Florida, 328 U.S. 331, 66 S.Ct. 1029, 90 L.Ed. 1295 (1945); Bridges v. California, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192 (1941). Disruption of the administration of justice is shown by evidence that a particular party to litigation has been prejudiced, that the outcome of a trial has been influenced or that a petit jury has been affected; Wood v. Georgia, supra.

* * *

The truth may not be punished, either criminally or civilly. Garrison v. Louisiana, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964). Moreover, even if Judge Kelly's criticisms of official conduct in the Sixth Judicial Circuit were in error factually and were defamatory (a matter not charged against him), Judge Kelly would
remain protected by the constitutional guaranty of free speech, so long as there has been no finding that his statements were knowingly false or made with reckless disregard of their truth or falsity. Pickering v. Board of Education, supra; New York Times Co. v. Sullivan, supra; Garrison v. Louisiana, supra; St. Amant v. Thompson, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968).

* * *

Tragic isolation implications could result from the precedent of discipline of Judge Kelly for speaking out on the need for court reform. The people of Florida will suffer if their judges must restrict their public statements to uncritical banalities in order to avoid the threat of similar sanctions. The right to disagree with others in matters of governmental policy is one of the cherished rights of American citizenship. It cannot be watered down by a board of censors or subjected to the possibility of sanctions that make its exercise a fearful prospect. The courts exist to serve the people. If the courts are not operating as efficiently as is humanly possible, then the people have the right to hear this from the individuals who are best able to tell them--the judges.

If the First Amendment does not protect a judge's right to speak in circumstances such as these, then we are bound to have in Florida a timorous lot of judges lacking independence, afraid of their judicial shadows, and fearful to exercise conscientiously the right to speak out in favor of judicial reform.

I do not believe the reach of the Code of Ethics Governing Judicial Conduct can be construed to deny Judge Kelly his privilege of speaking out under the related circumstances or that in doing so he violated the code. In the setting in which he exercised his right to speak he had certain inherent privileges, if not a duty to seek judicial reform.

* * *

Judge Kelly admits to being somewhat of a reformer, particularly in the judicial area--a trait which is often suspect by those who cling to the status quo. However, this trait, even if displeasing to lovers of ancient or outmoded forms, ought not be equated with irrationality or mental instability.

* * *

In summation, I think this is a regrettable inquiry that probably ought never to have been pursued. The Commission should have been extremely cautious in launching an inquiry in the sensitive

area of an elected official's inherent right to function in the sphere of free expression.

There is every reason why a corrupt, senile, insane, venal or obviously vindictive judge should be subjected to inquiry. So should one whose conduct is so habitually gross it clearly passes beyond the bounds of traditional and well-recognized judicial decorum or whose lack of a becoming judicial demeanor or whose arrogance obviously reaches the point of habitual intemperance. The Commission can unquestionably discipline in those areas of judicial conduct. But here the Commission in its very first inquiry essayed to venture into a very nebulous and debatable situation involving the psychological motivation of a judge and in the process equated his right to speak out on the subject of judicial reform as the prime example of his unbecoming conduct and bad behavior.

By so venturing, we have at our threshold for the first review of findings of the Commission, issues that set at stake the most fundamental concepts of a free democratic society.

The Commission brings into question the right of an <u>elected</u> judge to speak publicly on matters of public concern and the right of the people of this state to be informed of the administration of an important function of their government. The courts of this country have jealously guarded these rights against encroachments of all kinds.

Central to this democratic process is access to accurate information, for without this information the people cannot exercise their control of government.

* * *

Woven throughout the fabric of these proceedings is a disturbing question: Under what conditions may the elective process be nullified by the discipline or removal of elected judicial officials? The question is a disturbing one because in a democratic

society the people's elected officials should not be disturbed in their tenure except in instances of great aggravation.

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In Re Kelly, 238 So.2d 565, 574 (Fla. 1970) (dissenting opinion).

These words spoken by Justice Ervin some 23 years ago come back now to haunt the court. During the last quarter of a century the Commission has become ever more powerful in the execution of its duties. Another regrettable inquiry is now before the court that probably ought never to have been pursued.

It was pursued because the Commission, like Chief Judge Swigert, believed the "Horror Stories" about Judge Graham reported by the newspapers and his political opponents and did not bother to talk to him before jumping to the conclusion that what they heard was true.

If like Ms. Willis they had listened to the other side of the story before filing formal charges, they would not have been filed.

But instead they told Judge Graham they would listen to him for only five minutes per charge, an impossible time limit to accomplish the complicated explanations involved in this case.

So Judge Graham said let's go to trial and he told the public what was going on. That made the Commission angry. Bad judges are supposed to buckle at the knees before the mighty power of the Florida judicial Qualifications Commission. Furthermore, Judge Graham in exercising his right to free speech explained to the public that he intended

to prove that he was right when he said attorneys had misbehaved and politics, favoritism, and friendship had in the past been pervasive under the administration of Leonard Damron. He also announced his intention to exercise his right to use his office to defend himself.

If the Commission was angry before, now it was infuriated. Judge Graham was actually going to defend himself and it was clear now that they had opened up a pandora's box that was going to reveal some gross truths about the Citrus County Judicial System.

They then systematically set about doing everything they could to prevent Judge Graham from defending himself including

adding a separate charge against him for asking for public information and using his office to defend himself.

The deeper the Commission got into the case the more they realized Judge Graham was right and the more they realized how big a mistake it was not to have given him a little time to talk to them in a confidential hearing. However, instead of dropping the charges they proceeded to force him to a hearing unprepared, his subpoenas quashed, his evidence suppressed, his witnesses excluded, and under circumstances so severe that he could not possibly continue.

But he didn't cave in. Their rage built. Who is this man to challenge us? He's actually insisting on the rules of evidence. He's asking to proffer argument and proof. He's demanding to view the hundreds of documents the Commission

just wants to throw into evidence.

So what do they do? They threaten to put him in jail if he insists on acting like an attorney. So he says fine. I hope you have orange pajamas in my size cause I'm not quitting.

And at that point the Commission does the only thing left to do. It resigns itself to the fact that it is going to have to suffer through eight days of giggling, talking, yawning, laughing, and sleeping in the jury box, as this fool insists on presenting evidence when they have already known for months they are going to find him guilty.

Unfortunately, they forgot that the people of citrus county were watching. Funny thing about a television camera in court. Judge Graham knows this from experience. After five minutes you forget it is there.

So probably 30 to 40 thousand citizens watched as the Commissioners read newspapers and slept through their Judge's hearing. They watched as the Commission refused to let their Judge call his witnesses. They watched as the Commission refused to let their Judge introduce his evidence. They watched as the Commission refused to allow their Judge to respond to a policy emergency.

They watched as the Commission forced their Judge to sit down when others were

allowed to stand. They watched as the Commission refused to let their Judge have a lunch hour. They watched as the Commission laughed and yawned at their

Judge. And they watched as the Commission let their Attorney physically shove their Judge around the courtroom.

They watched as witness after witness confirmed the corrupt conduct of the public officials running their judicial system. They watched as witness after witness testified to Attorney misconduct including

hallway plots to intentionally cause trouble for the Judge.

They watched as police officers,civic leaders, assistant state attorneys, assistant public defenders, and private attorneys testified that their Judge was a consistently professional, courteous, and considerate Judge.

They watched King testify; political surveillance and "faggot" memos. They watched Dean testify; fix a ticket for a deputy?; that's OK. And they watched the equally dismal testimony of the other witnesses called by the Commission including their admissions of hateful bias against their Judge.

And then they watched it all over again when the cable companies re-ran it in full and unedited.

They know their Judge is not guilty. They know that he is being persecuted for not going along with a few bad attorneys and the politicians who ran the show under

Damron. They know that their Judge is a good Judge who did not receive a fair trial. And they know if they lose their Judge it is not because he was unethical but because he was too honest for the Citrus County Justice System to tolerate.

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This is truly a regrettable inquiry that ought never to have been pursued.

In closing Judge Graham leaves you with the thoughts of four individuals:

First, a fellow named Machiavelli:

"It must be considered that there is nothing more difficult to carry out nor more doubtful of success, nor dangerous to handle, than to initiate a new order of things for the reformer has enemies in all those who profit by the old order, and only lukewarm defenders in all those who would profit by the new order, this lukewarmness arising partly from fear of their adversaries, who have the laws in their favor; and partly from the incredulity of mankind, who do not truly believe in anything new until they have actual experience of it. Thus it arises that on every opportunity for attacking the reformer his opponents do so with the zeal of

partisans, the others only defend him halfheartedly so that between them he runs great danger."

The Prince

Secondly, the twenty-sixth President of the United States:

"It is not the critic who counts nor the man who points out how the strong man stumbled, or where the doer of deed could have done them better. The credit belongs to the man who is actually in the arena; whose face is marred by dust and sweat and blood; who strives valiantly, who errs and comes short again and again; who knows the great enthusiasms, the great devotions, and spends himself in a worthy cause; who, at the best, knows in the end the triumph of high achievement; and who, at the worst, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat."

Theodore Roosevelt

Finally, and most importantly, two citizens of Citrus County

who wrote a letter to their Judge very similar to

hundreds of others which have been mailed to Governor Chiles:

Doris and Douglas Holdread
1856 W. Gardenia Drive
Citrus Springs, FL 34434

Hon. Judge Gary Graham
110 N. Apopka Ave.
Courthouse Square
Inverness, FL 32650

Dear Judge Graham,

Our hearts are heavy. We feel a real miscarriage of justice has been committed in Citrus County, Fla. One could weep for the loss of fairness and disregard for the people in our fair County.

We have been supporters of yours since our arrival in 1985. We have been privileged to hear you speak on several occasion and have both been called for jury selection twice. You have come across a true gentleman who has scruples and a sense of fairness.

We have fought the fight to the best of our abilities. We've written to Gov. Chiles, the JQC, the Citrus Chronicle Letter's Also call ins and defended you, proudly, whenever the need arose.

Please know, Judge, we are praying that you will take your fight to the Supreme Court, will remain a practicing Atty. and will run for Judge again. We need you to continue the fight against the improprieties imposed by the political powers that be.

Feel heartened in that your supporters feel stronger than ever that your place is as the Honorable Judge Gary Graham of Citrus County, Fla.

Warmest regards,

/s/
Doris and Doug Holdread

Respectfully submitted,

s/ Gary G. Graham
Honorable Gary G. Graham
County Court Judge
Citrus County, Florida
One Courthouse Square, Room 215
Inverness, Florida 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

i HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to the Supreme Court of Florida, Supreme Court building, 500 S. Duval Street, Tallahassee, Florida 32399-1925, and a true copy by United States mail to Mr. Terrance A. Bostic, Special counsel to the Florida Judicial Qualifications Commission, P.O. Box 3401, Tampa, Florida 33601-3401, this 11th day of May, 1993.

S/ Gary G. Graham
Gary G. Graham

THE NINETEEN REMAINING CHARGES

The Court should reject the Findings of the Commission with respect to each and every remaining charge of misconduct for the reason that they are not supported by clear and convincing evidence.

CHARGE 1A

> The Commission charged that:
> On or about September 15, 1988, you made statements, widely reported in the local media, that local attorneys were like little children, acted goofy, made faces at you and that you should put them in jail so they could learn to read law books. You later retracted your statements and issued an apology.

* * *

The Commission in its Findings states that it relies on the testimony of Cindy Cokely (T, P 321-354), Clark Stillwell (T, P 443-462), the Bar Association's statement (R2) and the Respondent's written statement (R).

Purportedly on the basis of this evidence the Commission found that the Respondent made "a number of disparaging and insulting remarks" including statements that, "...Local attorneys were not on time, bickered among themselves, acted

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goofy, did not talk like attorneys or dress like attorneys and that they should put them in jail where they can read law books and learn how to act in court."

* * *

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There is no evidence whatsoever in the record that these public statements made to a newspaper with respect to attorneys in general were not true!

Cindy Cokely did not testify that any of the statements were untrue. Clark Stillwell did not testify that any of the statements were untrue. Not a single witness stepped forward to testify that attorneys in Citrus County had not been late, bickered, or acted goofy.

Indeed when the Respondent attempted to prove it through the introduction of court orders and transcripts of official court proceedings the Commission refused to allow it![2] ( ) If the Respondent had been allowed to address the issue of Citrus County attorney misconduct he would have proven by these documents that they had.

1. Completely failed to appear for court proceedings (A 157,161)

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[2]The Commission took the unusual position that proven attorney misconduct made after the Respondent's statements were not cooperative circumstantial evidence. This represents a neat theory since ostensibly if the Respondent had made and kept transcripts of attorney misconduct before his statements he would have been guilty of using the "resources of the State of Florida to conduct a private investigation." (See Charge 4J of the formal charges)

2. Called defendants "horses asses" during trials (A 158)
3. Doodled during court proceedings (A 159)
4. Failed to file notices of appearance before representing clients (A 160,162)
5. Appeared in court without their clients, without their pleadings and without their law (A 163)
6. Called Assistant State Attorneys "little lady" and "boy" (A 164)
7. Walked out of court before being excused and before their proceedings were finished (A 165)
8. Argued out of turn and yelled "bull" at each other ( )
9. Generally engaged in numerous acts of unprofessional conduct (A 166)

Neither does the statement of the local Bar (R 2) deny the truth of the Respondent's public statements. It could not. Indeed, the gist of the Bar statement is that it considers the public criticisms of attorneys in general by a judge without identifying any particular miscreants to be a per se violation of the Florida Code of Judicial Ethics.

This is not true. The public has a right to know about matters concerning the due administration of justice. They have a right to know especially from these in the best position

to be informed on these matters of interest. Those in a position to know of these matters of public interest have a free speech right and moral ethical obligation to speak up. Accordingly, there have been many occasions where judges and other prominent members of the judicial system have criticized attorneys.

In a law review article titled "A Sick Profession?" Former Chief Justice of the United States Supreme Court had the following comments to make:

> "Montaigne said, long ago, that an advocate is sometimes well advised to state his final proposition first. My final proposition can be roughly stated as follows: (1) the legal profession as a whole has a very

poor standing; (2) there are many causes for this; some of them are the incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and (3) there is something we can and ought to do about this as the English bar and bench did a century ago.

I find no pleasure in saying to you that the majority of lawyers who appear in court are so poorly trained that they are not properly performing their jobs, and that their manners, professional performance and ethics offend a great many people. Those who do not accept these harsh premises will not accept the proposal I intend to make.

We are all familiar with the gibes and taunts which have been directed at lawyers for centuries. Literature is filled with them. You remember that Samuel Johnson, himself a lawyer, was the author of the quip, "I do not wish to speak ill of any man behind his back, but the fact is he is an attorney." But I need not go back into ancient history to make this point because many surveys of the public opinion testers often make the same point. In one recent poll the Louis Harris organization made a survey of which occupational groups stood highest in the esteem of the public. Doctors were the highest, followed by clergymen, educators and judges, but lawyers did

not get into the top fourteen categories.

There is no single cause for what, in Madison Avenue terms, would be called the "bad image" of the legal profession. The total image is a stream into which many things are poured. The deportment and misconduct of some members of the bar pollute this stream and their bad manners contribute to the bad performance.

> From more than twenty years of active practice, only part of which was in the courtroom, and from more than ten years on the bench, I think I have gained a fairly reasonable and representative view of what goes on in courtrooms. When I first reached some tentative conclusions some years ago, my appraisal of courtroom performance was so low that I began to check it with lawyers and judges in various parts of the country to see whether I had misjudged. From time to time, for example, in meetings with judges, I would ask what proportion of the cases tried before them were properly presented. The highest figure ever stated was twenty-five percent; the lowest was ten percent. From that general and sweeping proposition, I began to probe for the specific reasons why trial judges--the best available observers--took such a dim view of the performance of lawyers in the courts. The answers covered the entire range of the acts performed in the courtroom.
>
> On the most favorable view expressed, seventy-five percent of the lawyers appearing in the courtroom were deficient by reason of poor preparation, inability to frame questions properly, lack of ability to conduct a proper cross-examination, lack of ability to present expert testimony, lack of ability to frame objections adequately, lack of basic analytic ability in the framing of issues and lack of ability to make an adequate argument to a jury. Also very high on the list of deficiencies was the lack of an understanding of basic courtroom manners and etiquette, and a seeming unawareness of many of the fundamental ethics of the profession.
>
> * * *

The second category has to do with manners and ethics. Some of the studies made in recent years in the effort

to understand the jury function give strong support to the observations of judges and lawyers. The things jurors seem to find offensive are the bad manners of lawyers who abuse witnesses,

lawyers who snarl a each other across the counsel table, lawyers who are discourteous or slovenly in their communications with the judge and the jury. The jury surveys confirm a fact well known, I am sure, to every one of you - that bad manners of a trial lawyer almost invariably count against his case. This is a proposition not recognized or not accepted by a substantial number of lawyers who think they impress clients - and perhaps prospective clients - by being known as the "gutsy lawyer." We will come back to him later.

> A businessman, who served on a jury recently took the trouble to write an article on his observation. He said:
>
> The most important persons in the courtroom to the juryman are the attorneys who participate in the trial...The attorney is always on the spot. He is the focus of attention his appearance, manners, logic, and what he puts value upon are the factors that bring jurymen to conclusions.

He mentioned the bad manners, the bullying and strutting of lawyers,the belittling and confusing of witnesses, and of this he said:

> Later, in the jury room the entire group expresses disapproval of the attorney's methods. Though not on trial, the attorney was tried by the jury, a verdict reached, and his client suffered from his behavior.

* * *

However, these things I have recited cannot explain the decline of the "trial bar". None of these factors can account for the ineptness, the bungling, the malpractice, if you will or the bad manners and bad ethics which can be observed every day in courthouses all over the country.

As a solution to the bad manners and unprofessional Justice Berger suggested the following:

> Having expressed these critical views about the substandard performances of the majority of lawyers who appear in courts, it is only fair that I make some comment about the performance of judges. The trial judge can do relatively little about bad preparation, inept examination of witnesses, or general incompetence of lawyers, but he can do a great deal about the bad manners and bad ethics of the fringe of the legal profession who sometimes make the trial look like a saloon brawl. I regret to say that too few trial judges exercise proper control of their own courtrooms to enforce minimum standards of etiquette, deportment, and ethics.

Unfortunately for the Respondent the local Bar and the Commission not only disagree with Justice Berger, but want to destroy the Respondent for having taken his advice to heart. Strange indeed that neither the Bar nor the Commission called for the ouster of Justice Berger who at that time was a Judge of the United States Court of Appeals Washington, D.C. Surely his statements were more critical than Respondent's.

In November of 1990 United States Supreme Court Justice Anthony Kennedy was reported by Time Magazine as stating that, "We see shoddy practice in every court in the country including the Supreme Court of the United States." (A166)

On March 12, 1993 United States Supreme Court Justice Sandra Day O'Connor gave a lecture at the University of Houston. She said in a survey of lawyers half of them described their colleagues as "obnoxious". She said, "Lawyers are compared frequently and unfavorably, I might add, with sharks, snakes, and skunks". (A167)

- PAGE 45 -

Other public statements include:

1. "Someone needs to say it; many trial lawyers today are far too rude - to clients, to judges, and shamefully, to each other. Unfortunately, I see this in my practice frequently, and I hear similar stories around the country." James A. George, Attorney at Law, Trail Magazine, May 1988.

2. ". . there is no justification for members of our profession to be other than courteous to each other. . The practice of law today is fraught with enough unavoidable difficulties without the burdens which too frequently result from displays of discourtesy among ourselves." Ivan E. Barris, President of the Michigan Bar Association, The Michigan Bar Journal, August 1980.

3. "Lawyers are becoming very unpleasant people to be with, especially if you are another lawyer. A disturbing number of them apparently believe that the way to deal with opposing counsel is to be impolite, intemperate, and insulting." W.B. Lytton, First Assistant United States Attorney Eastern District of Pennsylvania, ABA Journal, April 1982.

4. "As State Bar President, I was privileged to attend the Wisconsin Judicial Conference and participate in a very interesting discussion that dealt with what lawyers and judges do not like about each other . . . Here are some legitimate complaints that I heard from judges:

a) demonstrable showing of disrespect...,

b) habitual tardiness ...,

c) misrepresentations of fact and law,

d) punitive use of the rule allowing substitution of judges, and

e) failure to cooperate with opposing counsel . . ." Daniel W. Hildebrand, Wisconsin Lawyer, November 1991.

5. "If it please the court," is an expression often heard by a court. Regrettably, in too many instances what follows not only does not

please the court, but succeeds only in raising judicial ire. Similarly, phrases such as brother or sister counsel are frequently a preamble to character assassination." Brian K. Carroll, Attorney at Law, Res Gestae, August 1990.

6. ". . . lack of preparation is the most frequent complaint of trial judges . . .; not only are lawyers late to court, sometimes they do not even bother to call; lawyers mislead the court about the facts and the law, interrupting and judge, slumping somnolently in your chair when judge and jury enter the courtroom and shouting at the judge are tactics guaranteed not to evoke tender treatment from the judiciary; some lawyers take it as part of their job to be rude to opposing counsel." Richard B. Klein, Judge of the Philadelphia Court of Common Pleas, Litigation, Winter 1987.

7. "One of the important topics discussed at the Association's recent Long Range Planning Conference on professionalism concerned restoring our collegiality. Horrible examples of discourtesy and downright meanness were cited and we all agreed - there's a problem, but why and what to do about it?" William A. Martin, Executive Director, Arkansas Bar Association, Arkansas Lawyer, July 1986.

8. "Chesterfield Smith, past president of the American Bar Association, has said that there is an incompetent "fringe" of 20 to 25 percent of the lawyers now practicing whom he 'would not trust to do anything.'" Herbert Denenberg, Former Professor of Law, Temple University, The Family Legal Guide, Wists Publishing Company 1981.

Finally let's look at two examples of how individuals very closely related to this case have spoken about attorneys.

First is Mr. Clark Stillwell. Three times the President of the Citrus County Bar Association (T, p445, L2). He and the Commission want this Court to believe that he earnestly believes that Judge Graham's comments that a few attorneys were not on time, bickered among themselves, acted goofy and did not talk or dress like attorneys is so serious an affront to the legal profession that it required a confrontational meeting among the Administrative Circuit Judge, the Bar Association and the County Judge and a formal written press statement to the news media.

But, what did he, the Administrative Judge or the Bar Association have to say or do about Leonard Damron while, in the

words of the Florida Supreme Court, he irreparably damaged the Citrus County Court system for over a decade? The answer . . . **NOTHING!!!** (T, P461, L5) But did testify as a character witness for him at his trial!

( )

And what did Mr. Stillwell have to say when he had an opportunity to comment on attorneys in Citrus County? In a statement that impugned a specific attorney in particular and

all new members of the legal profession he said that "The most dangerous thing in the world is a love struck 16-year-old. The second most dangerous thing is a brand new lawyer." (A168) (T

)

Secondly, Mr. Joseph Reiter, Chairman of the Commission that has found the Respondent unfit to be a judge for saying that a few attorneys have acted goofy. While President of the Florida Bar Association he wrote an article questioning "Whatever Happened to Professional Courtesy?" discussing the need for a written standard of professional courtesy.

He lamented that "It is unfortunate that these standards have to be placed in writing but it appears that many lawyers are forgetful that they must act as professionals and be courteous to opposing counsel. The ones who abuse the system are a trial upon our legal system and in the long run we'll suffer the consequence of their discourtesies."! The Florida Bar Journal, February 1987.

United States Supreme Court Justices, Judges from the Common Pleas Court of Philadelphia, Bar Association presidents, attorneys, law professors, the Citrus County Bar President and the Chairman of the Commission have criticized attorneys as abusive, slovenly, bad mannered, strutting, belittling, unprepared, poorly trained, offensive, obnoxious, skunklike, snakelike, sharklike, rude, discourteous, unpleasant, impolite, intemperate, insulting, disrespectful, tardy, uncooperative, misleading, mean, and next to lovesick teenagers the most dangerous thing in the world!

They are not criticized in return by the organized bar.

Indeed their insults are published in the bar journals as good advice.

Judge Graham has said that there are many fine attorneys in Citrus County but that some of them are not on time, bicker among themselves, act goofy, and do not talk or dress like attorneys. For this he should be branded unethical and unfit.

Only a group of hostile political opponents, adversaries, envious and resentful of the Judge's success in clearing up the County Court and bent on revenge of their deposed corrupt judge would dare to put forth such an obviously unfounded proposition.

Only a similar group of overzealous commissioners prejudiced by years of one-sided ex parte criticisms and vicious news editorials would agree.

Finally, the Respondent is and only in the twisted world of the Citrus County Judicial system could a judge's apology to ease a tense situation be used as evidence against him that he is rude! Has Chief Justice Berger ever apologized? What about Clark Stillwell? Has Chairman Reiter ever apologized for saying that, "many lawyers are forgetful that they must act as professionals."

Of course not and neither should they for they are right. And neither should this Court commit the serious error of sanctioning an honest Judge for truthful remarks about attorneys.

But the Commission says "Oh my" the judge also said that he should put the attorneys in jail where they can read law

books and learn how to act in Court. What the commission doesn't say is that putting an attorney in jail was mentioned as an appropriate sanction for an attorney who had hypothetically been held in contempt on four prior occasions with less severe sanction.

That the Commission would leave that detail out of its charge and findings proves the truth of the published criticisms that some attorneys are abusive, mean, and misleading.

The pleadings and findings in this case regarding the sanctions the judge would impose are intentionally and maliciously misleading. Only by stating the fifth sanction out of context without the proposed graduated penalties for four previous sanctions would the Respondent's statements seem bizarre or unethical.

Surely it is just and reasonable to sentence an attorney to a jail term for a fifth act of contempt. And perhaps indeed he would use his time wisely to learn the law if he was so punished.

Finally, the Court should consider just how this dispute became the matter of public controversy.

Mr. Bostic throughout the proceedings and the Commission by adopting its findings try to characterize the Respondent in this case as a Richard Kelly clone. An arrogant fellow who like Judge Kelley "hungers for public esteem" --- "with the stolen coin of other men's public reputations."

But how does that conclusion compare with the facts of

this case? Did Judge Graham call a press conference like Kelley? **NO.** He called an attorney to a confidential sidebar and asked him to privately relay a message to his fellow attorneys to shape up. Instead Mr. Hawkes, office buddy to Brad King and Charles Horn, discloses the sidebar to the press for the very purpose of creating a confrontation.

At the time the Respondent could not understand this. Now with the benefit of Attorney Gary Poe's unrebutted testimony it is clear that this confrontation was yet another example of the agreed plan between Mr. Hawkes and Mr. Horn to disrupt the Citrus County Court. (T, P2076-2079)

"The truth may not be punished either criminally or civilly," Garrison vs Louisiana, 379 U.S. 64 (1964). "To the extent that the Board's position here can be taken to suggest that even comments on matters of public concern that are substantially correct . . . may furnish grounds for dismissal if they are sufficiently critical in tone, we unequivocally reject it," Pickering vs Board of Education, 391 U.S. 563.

The conflict between the Respondent and the local bar occurred because a small number of attorneys refused to act correctly in court. It became a public confrontation because an attorney the Respondent trusted unknown to him had conspired to cause trouble whenever possible and invited press coverage.

The Respondent has not violated the Code of Judicial Conduct with respect to this matter. The burden of the Commission is the prove the contrary by clear and convincing evidence. The Commission has never come close.

DOCUMENT 19

Excerpts from Judge Graham's

Reply to Reply

BEFORE THE FLORIDA SUPREME COURT

INQUIRY CONCERNING A

JUDGE NO. 91415

CASE NO. 80,273

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

_____/

REPLY TO COMMISSIONS' REPLY

CORRECTIONS

Due to the short time allowed the Respondent to research, draft and file his Show Cause Response his Third Amended Motion to Dismiss and supporting memorandum contained certain errors and deleted pages. Accordingly the Respondent incorporates by reference and attaches hereto his Fourth Amendment Motion to Dismiss and Memorandum of Law in Support of Fourth Amended Motion to Dismiss. The Findings of the Florida Judicial Qualifications Commission should be rejected based on the Constitutional infirmities set forth therein.

* * *

I also invite the Court to read Exhibit 176 a letter to the Florida Supreme Court dated May 23, 1993, which includes the following observations of two Citrus County citizens:

- PAGE 23 -

Daniel R. & Marie L. Mason
4251 N. Little Dove Terrace
Hernando, FL 34442
May 23, 1993

Florida Supreme Court
Clerk's Office
500 S. Duval St.
Tallahassee, FL 32399-1927

Your Honors:

My wife Marie and myself are writing this letter to express our unquestionable support of County Judge Gary Graham of Citrus County Florida.

Both Marie and I are registered voters in Citrus County and we exercise this constitutional right on each and every election day. We, as registered voters, had the privilege and honor to vote for Judge Graham in his last election. We, like a clear majority of the registered voters in Citrus County, felt that Judge Graham would represent the best interests of us and the law abiding majority in Citrus County. We feel that he has done just that and he has administered justice in his court in a fair, practical, courteous and compassionate manner.

Now enter onto the scene the Judicial Qualifications Commission to investigate a series of frivolous complaints filed by the self-

aggrandizing elite of the body politic of Citrus County, in an attempt to achieve their self-serving interest and agenda.

Both Marie and I attended every hour of hearings that the JQC conducted during the eight days they spent in Citrus County. We listened attentively to all testimony presented and paid particular attention to the behavior and attentiveness of each of the Commission members, performing in the capacity of jurors in these hearings. Your Honors, if Marie or I were to behave in the jury box during a trial, as did a majority of this Commission during these hearings, we would have been summarily reprimanded and admonished by the presiding judge. And rightfully so.

Considering the endless chatter, smirking, snoozing, newspaper reading, checking one's pocket diary and general lack of attention, all of which took place while the hearings were in session, we find it next to impossible to understand how this Body could make an informed decision. Unless of course that decision was made before this Commission convened these hearings.

In the Commission's report to the Supreme Court on these hearings, they stated that Judge Graham was "arrogant", "arbitrary" and "capricious" in his administration of justice. If the Commission had not noted that these adjectives applied to Judge Graham, we would have readily drawn the conclusion that they were describing their own behavior during these hearings.

In conclusion, Judge Graham was elected by the voters of Citrus County. If we, the voters of Citrus County, are unhappy with the way Judge Graham is performing his duties, give us, the voters, our constitutional right to vote him out of office. Do not give his political opponents what they have been unable to achieve at the ballot box.

Respectfully yours,

s/ Daniel R. Mason
DANIEL R. MASON

s/ Marie L. Mason
MARIE L. MASON

CONCLUSION

Justice Ervin once wrote:

> The Commission has not been an instrument of oppression - it has not allowed itself to become a lever of any special group or interest to threaten the independence of Florida judges. The fear that "silk stocking" elements of the Bar and Bench through the medium of the Commission would ride herd upon highly independent judges has not materailized, with the one possible exception of Judge Kelly's case.
>
> State Ex Rel. Turner v. Earle

295 So 2d 609, 622 (Fla. 1974)

NEarly 20 years later that is no longer true. The "silk stocking" elements of the Bar and Bench in union with the liberal news media are now riding herd on our highly independent judges and with particular vengeance aginst Judge Grahm in Citrus County.

Brad King, the State Attorney for the Fifth Judicial Circuit, who pledged a "war" against Judge Graham, who kept "faggot memos" regarding him and who used state resources to collect political surveillance of Judge Graham's supporters understood the Commission's evolution into an instrument of oppression. That is

why he included with his complaint three baised hateful news editorials for the Commission's consideration.

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Spike Fitzpatrick and Clark Stillwell both past presidents of the local bar were called to testify against him. Joseph Reiter past President of the Flroida Bar rode herd over the hearings as Chairman and trial boss.

That is what this case is all about. Do the lawyers and newspapers choose our judges or do the people?

> It is my understanding the Commission's practice is not to concern itself with trifles or "mares' nests" or unsubstantiated charges against a judge or to allow its authority to be used for the venting of spleen of disappointed litigants or special groups with an axe to grind.
>
> Turner v. Earle, supra at P 622

Talk about unsubstantiated charges. The Commission at one stage during these proceedings filed 26 unsubstantiated charges against Judge Graham including complaints that he would not let a pornography thief yell "I want a fu_ _ing attorney" through the open door of a packed courtroom and a "charge" that he had once stated in court "You can't separate morality form the law."

Furthermore, it has had the audacity to find him guilty of a mares' nest of trivial charges such as telling a woman that "You are the problem" when in open court she tells the jduge that her young adult son who is on probation for burglary

was just doing what every high school senior does on graduation night, when he painted giant penises on the school wallls replete with vulgarities like "leave her with a shaved beaver".

So too is he guilty of not allowing an attorney who acts and talks like a fool in court to also dress himself in a leather disco jacket.

The complaintants in this case are either:

1. silk stocking elements of the local bench and bar miffed at Judge Graham for having ousted their corrupt buddy former Judge Damron;

2. acknowledge bitter are vindictive political enemies, or

3. disgruntled litigants or their attorneys with an axe to grind.

All of them acknowledged a bias against him and some even professed their hatred of him.

Excluded from the evidence was 400 hours of videotape and over 250 witnesses, including police officers, jurors, victims,

attorneys, and citizens of Citrus County who would have rebutted the testimony of the handfrul of witnesses bent on abusing the legitimate authority of the Commission to obtain their personal vengeance against Judge Graham at the expense of our Democratic system of government.

This Honorable Court should keep in perspective the history of the Commission. It was created because Judge Kelley's political opponents and some fellow judges with an ax to grind could not get him impeached.

During the Senate trial counsel for Kelley articulated the concern we must all have for the independence of the judiciary:

> "Our primary responsibility is to Richard Kelly, but I think, in a larger sense, that we have a responsibility to the entire judiciary of the State of Florida. The proposition that is before you in these proceedings involves every judge, sitting in every court in the State of Florida, and that proposition is simply this:
>
> Must a judge render decisions on the basis of the influence of the lawyer involved? Must a judge curry favor with the Bar that practices before him, or risk impeachment, risk being discharged from

> his office, risk public disgrace and humiliation, or can he make his decisions independently, as an independent judiciary was intended to make them?
>
> Now, gentlemen, I think, also, in a larger
>
> - PAGE 64 -
>
> sense, every citizen of the State of Florida is a participant in these proceedings because, when the independence of the judiciary is diminished, it diminishes all of us. The very foundation of all our liberties and all our rights depends upon an independent judiciary, which is not subject to prejudice by lawyers, litigants, or from any other source."

Therein lies the double irony of this case.

First, Judge Graham is assailed not because he is unethical, dependent, or lacks integrity. He is being assailed because he has two [sic] much integrity to remain silent and ignore the misconduct of others as it affects the immediate due administration of justice in the Citrus County Court.

He won't let a State Attorney who has engaged in politics and favoritism in the disposition of criminal cases for politically prominent individuals, prosecute an admitted felony offense in misdemeanor court without asking why. He will not let defendants or their attorneys falsify the record without comment.

He will not allow the Chief Judge to abuse his administrative authority by removing him from a criminal case for having correctly ruled against the State of Florida and to do so with an Administrative Order which lies about the reason it was executed. He will not let attorneys play the fool in

leather disco jackets. He will not let a high ranking Deputy Sheriff "grab" his friend out of jail.

Furthermore, he is just too fiercely independent to allow the newspapers, the attorneys, his political opponents or the Commission to frighten him away from his duty to speak up against these outrages.

The Second irony is that the very Commission that is supposed to defend the independence and integrity of the judiciary has become an instrument of oppression to crush the very independence and integrity it was created to preserve.

The Commission, inflamed by the newspaper editorials sent to it by Mr. King, did not have the integrity or independence necessary to conduct a fair investigation of Judge Graham.

It jumped to the conclusion that he was guilty and proceeded to the eight day hearing which was a complete joke. Nothing that Judge Graham is falsely accused of singularly or cumulatively comes close to the rude arrogant, indifferent and wrongful treatment meted out by the Commission during the proceedings which were viewed by thousands of Citrus County citizens.

- PAGE 66 -

The Commission did not try Judge Graham. It disgraced itself. It proved just how correct the Bench and Bar Committee is in recommending a restructuring of the Commission.

The Commission has indeed become an "instrument of oppression". It has become a lever of special groups or interest which threaten the independence of the judiciary. It has become its practice to concern itself with trifles or mares' nests of unsubstantiated charges.[4/] It has become an institution which no longer provides proceedings which are "essentially fair".

The time has come to destroy it. The Bench and Bar Committee agrees. The facts of this case cry out for its destruction. The Judges of this state are becoming a timorous lot afraid

of their judicial shadows, fearful to exercise conscientiously their rights.

I urge this Court to stand up for Judge Graham. I urge it to stand up for the people of Citrus County. I urge it to stand up for the independence and integrity of the judiciary and the fundamental values of our nation.

4/Judge Bryson is currently under prosecution for receiving wake-up calls from a County Commissioner. Judge Perry is being prosecuted for holding defendants in contempt for driving away from the Courthouse after their licenses have been suspended.

I urge the Court to do what has never been done in the almost one quarter of a century that the Commission has existed. I ask it to reject the Findings of the Commission.

I also ask it to commend Judge Graham for his dedication and courage in reforming the Citrus County Court and standing up for its integrity over almost overwhelming opposition.

Finally, I urge the Court to rule the Commission and the Code it enforces unconstitutional and to work toward its replacement by a system which at a minimum provides respondent judges with the right to a civil trial before an unbiased jury of fellow citizens.

Respectfully submitted,

/s/_____
HONORABLE GARY GRAHAM
Post Office Box 519
Inverness, Florida 34451

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to the Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, and a true copy mailed to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, Post Office Box 3401, Tampa, Florida 33601, This 1st day of June 1993.

/s/_____

DOCUMENT 20

**Letter from Brad King to
Judicial Qualifications Commission,
with attached newspaper editorials**

A 658

OFFICE OF THE STATE ATTORNEY
Fifth Judicial Circuit of Florida
Serving Marion, Lake, Citrus, Sumter, Hernando Counties

BRAD KING
State Attorney

19 N.W. Pine Avenue
Ocala, Florida 32670
Telephone (904) 622-0352

July 11, 1991

Executive Director
Judicial Qualifications Commission
Room 102, The Historic Capitol
Tallahassee, FL 32399-6000

Dear Sir or Madam:

Reference my previous complaints, the enclosed clearly demonstrate the diminution of public confidence in the Citrus County Court.

Sincerely,

/S Brad King

BRADLEY KING
State Attorney

BK/aw
enc.

GARY G. GRAHAM NO. 91-415

EXHIBIT 98 EVIDENCE

ST. PETERSBURG FLORIDA TIMES
Citrus County Edition
Friday, July 5, 1991

EDITORIAL

OPINION

Judge has antagonized county

In many instances, to say a person marches to a different drummer is a compliment. It means the person is not afraid to go his own way if reason tells him it is the right course to take.

Unfortunately, in the case of County Judge Graham, marching to a different drummer only means he is out of step with good sense.

Graham's often excessive sentences, his rigid interpretations of the law and his hair-trigger mouth have put him at odds with just about everyone involved in the criminal justice system: lawyers, the state attorney, the chief circuit judge, the public defenders and now the Citrus County Sheriff.

One, by one, Graham unnecessarily has alienated these people, just at the time when the county needs him to work with them to solve the serious crisis of recurring crowded conditions at the county jail.

Instead, Graham continues to mete out long, inappropriate sentences for relatively minor offenses that even a tough sheriff like Charles Dean says don't do any good after a certain length of time. Graham repeatedly spurns the reasonable and professionally presented pleas of the sheriff to cooperate in reducing the number of inmates.

Dean, an experienced and insightful law enforcement officer, would not make such a request if he did not think there were people in his jail who would be okay on the outside. He is politically astute enough not to suggest letting dangerous people go. He, along with Jail Administrator Roberta Moffatt, observe inmates on a daily basis. They are in the best possible position to know whether an inmate could be trusted outside the jail. Graham should listen to them instead of continuing to send them more and more prisoners.

Now it has fallen to the acting chief circuit judge to do what Graham himself should do. Circuit Judge Victor J. Musleh, acting on behalf of the chief judge, has formed a committee to reduce Citrus' jail population. Members will gather each day that the two

jails go over their limit and will compile a list of inmates who might be released.

The move became imperative after several recent inmate fights and security threats at the jail that Dean said were a direct result of having too many people in too few cells.

First to go will be people who won't pose a danger to county residents, people who would probably be on the streets any way, were it not for Graham's eagerness to put everyone behind bars, no matter how minor the offense.

Others will be considered according to their offense, their ties to the community and their criminal record.

Once the list is compiled, Circuit Judge William Edwards will decide who stays and who goes.

Graham was invited to be on the committee, but, in his usual petulant way, refused to serve. Apparently, he would rather spend his time in court sentencing still more people to ridiculously long, non-productive jail terms and holing away in his office refusing to talk with the media, and by extension the public.

Citrus County taxpayers should be outraged. The meter is ticking, and the costs are soaring.

CITRUS COUNTY CHRONICLE
July 7, 1991
Editorial

Situation must be diffused

GRAHAM SHOULD BE INVESTIGATED BY JQC

Gary Graham enjoys the position of being a martyr. The controversial county judge has made a political career out of positioning himself against others. He has successfully convinced voters that he is protecting them against the evils of society.

But our "television judge" has done more than just position himself against those accused of committing crimes. He has made an art out of confrontations with the state attorney, the sheriff, the jail administrator, the chief judge, defense attorneys and the press.

Could it be that only Gary Graham's vision of the criminal justice system is correct? We think not.

Graham has always managed to stay in the headlines by way of his outrageous sentences of those accused of traffic violations or misdemeanors. We don't have to go into the "bull" case or talk about snakes or pickup trucks.

Graham's inability to work with those other professionals in the criminal justice and judicial system has created institutional

problems that are costing both the taxpayers of this county real dollars and the county court its respectability.

Earlier this week the chief judge created a committee to review the jail over-crowding conditions in Inverness. The sheriff and jail administrator had a crisis on their hands when inmates protesting overcrowding flooded the jail toilets and created an electrical short that opened all the cell doors at once. Obviously, there could have been hostage situations or escape attempts. Fortunately, that did not happen. But the potential for disaster was there. The sheriff and chief judge agreed quick action was needed.

The chief judge ordered that a committee made up of Judge Graham, State Attorney Brad King, Public Defender Howard Babb and Jail Administrator Capt. Robin Moffatt review the particulars on each person in the county jail and provide Circuit Judge William F. Edwards with a list of pretrial inmates who could be released without creating a threat to the community.

The chief judge felt Graham needed to be on the committee because he was responsible for most of the inmates who would be considered for release. But Judge Graham replied that he was too busy to meet. Luckily, the chief judge recognized that Graham

again permitted his personal dislike of the sheriff to get in way of doing what was right. The chief judge removed Graham from the committee and 22 inmates deemed nondangerous to the public were reviewed and quickly released.

It was just the week before that Graham permitted his feud with State Attorney Brad King to erupt again. Graham accused King of unethical behavior and of violating ex parte laws by contacting the chief circuit judge in an effort to have Graham removed from an important murder trial.

But Graham never bothered to get the facts before he made his accusations. The chief circuit judge later said that King had never contacted him and that Graham's temporary appointment as a circuit court judge was ended when a qualified circuit court judge became available.

This was the same case where graham, filling in for injured Circuit Court Judge John Thurman, told lawyers that they were forbidden to tell members of the press about an upcoming hearing because he didn't want any reporters present.

The state's Judicial Qualifications Commission has the authority to examine Graham's performance as a jurist. And they

have the power to recommend to the Supreme Court that corrective action be taken.

We feel the JQC needs to immediately review the Graham situation. Graham packs the jails with traffic offenders. He routinely raises bail so that those accused of crimes must stay behind bars for lengthy periods of time awaiting disposition of their misdemeanor cases.

He refuses to take responsibility for his practices and wraps himself in a cloak of "I am protecting society" without regard to the realities of the dangerous situation he is helping to create.

He constantly feuds with the sheriff and has no regard for the beleaguered jail administration, the state attorney and other judges. And he makes unfounded accusations about his critics.

It would be a healthy step for the Judicial Qualifications Commission, an outside organization, to step in and diffuse the situation.

DOCUMENT 21

Notice of Formal Charges

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE

No. 91-415

_____/

NOTICE OF FORMAL CHARGES

TO: The Honorable Gary G. Graham
Citrus County Court Judge
Room 215, Old Citrus County Courthouse
Inverness, FL 32650-4802

YOU ARE HEREBY ADVISED that the Florida Judicial Qualifications Commission, by a vote of at least seven members of the said Commission, at its meeting in Tampa, Florida, on July 31, 1992, has determined, pursuant to Rules 2(b)(2) and 7 of the Florida Judicial Qualifications Commission Rules, that there is probably cause to initiate formal charges against you.

Formal proceedings are hereby instituted to inquire into the following charges against you:

1. You have repeatedly used your position as Judge of the Citrus County Court to make allegations of official misconduct and improper criticisms against fellow judges, other elected officials and their assistants and others, without reasonable

factual basis or due regard for their personal and professional reputations. This allegation includes, but may

not be limited to, the following:

A. On or about September 15, 1988, you made statements, widely reported in the local media, that local attorneys were like little children, acted goofy, made faces at you and that you should put them in jail so they could learn to read law books. You later retracted your statements and issued an apology.

B. In an article published September 15, 1988, in the St. Petersburg Times, several weeks before the election for the State Attorney, you are quoted as saying "I know of attorneys and doctors who have been arrested for DUIs and have had their DUIs reduced to reckless driving, basically because they are doctors and lawyers." According to the report, you refused to discuss specific cases.

C. On February 20, 1991, in open court and during a hearing in State v. Pfeister, Case No. 91-87-TC, you accused the Office of the State Attorney of "routinely regulating" DUI offenses of lawyers and doctors to reckless driving for "no apparent reason."

D. On February 20, 1991, in open court and during a hearing in State v. Pfeister, Case No. 91-87-TC, you accused State Attorney Brad King of favoritism while he was an assistant state attorney in his handling of State vs. Ortolano.

E. On February 20, 1991, in open court and during a hearing in State v.Pfeister, Case No. 91-87-TC, you repeatedly demanded that assistant state attorney Richard D. Ridgeway provide an explanation regarding the exercise of discretion by the Office of the State Attorney in filing a DUI case as a misdemeanor rather than a felony and, in doing so, stated that the explanation was required so that you could ascertain that politics and favoritism were not involved in the charging decision of the State Attorney.

F. On June 10, 1991, in open court and on the public record, you accused State Attorney King, and, by implication, Chief Judge William T. Swigert, of improper ex parte communications which you claimed resulted in the revocation of your appointment as acting Citrus County Circuit Court Judge. In the same discourse, you accused State Attorney King of improperly seeking your

removal as acting Citrus County Circuit Court Judge because he was displeased with certain of your recent legal decisions.

G. On September 17, 1991, in open court and during a hearing in State v. Webb, Case No., 91-8161-TC, you publicly accused Captain Roberta Moffatt and Investigator Larry Burkhalter of the Citrus County Sheriff's Office with "trading official actions for other beneficial acts by the defendant." You also stated on the record and in open court:

> so all the people in the Citrus County justice system that think they can trade favors around and release prisoners from jail because of mutual favors and friendships, I want them to know what happens when you get caught in the Citrus County Court. So from now on the best thing people can do for their friends who get arrested is not to wrongfully intervene in their case. Okay? So you tell your friends and that's what you got for trading favors to get out of the Citrus County Jail.

H. On March 10, 1992, in open court and during a hearing in State v. Riggs, Case No. 90-5139-MM, you accused the defendant and the Office of the Public Defender with deliberately falsifying a transcript used in the defendant's appeal.

The aforesaid conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF

THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

B. A judge should not allow his personal relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or authorize others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor or fear of criticism.

2. On various occasions you have exceeded and abused the power of your office by imposing improper sentences and improper use of your contempt powers. This allegation includes, but may not be limited to, the following:

A. In State v. Rouse, Case No.92-1011-MM, you ordered an unrepresented defendant to participate in two "buys" and two "sells" of drugs as a condition of his sentence of 20 days imprisonment and two years probation without conferring with law enforcement to consider the suitability or desirability of the defendant's cooperation. Your sentence was pronounced in open court and in the presence of other jail inmates.

B. In State v. Shirling, Case No. 91-10026-MM, you ordered an unrepresented defendant to "assist the State Attorneys Office in catching a drug dealer." You did not confer with the State Attorney to consider the suitability or desirability of the

defendant's cooperation. Your sentence was pronounced in open court.

C. In State v. Musser, Case No. 91-1258-MM, you rejected a negotiated plea agreement in a domestic violence case which had been approved by the victim and refused to grant the defendant probation unless the victim and the defendant either married or lived separately. In doing so, you are reported to have stated that "you cannot separate morality from the law. There is just no way to do it."

D. In State v. Stanage, Case No. 89-3286-TC, as a part of your sentence, you suspended the driver's license of the defendant who was a passenger in an automobile with an open container of alcohol. When the defendant questioned the fairness of your decision, you asked if he wanted the Court to reconsider its sentence. When he replied in the affirmative, you added an additional three months to the suspension. You thereafter inquired if the defendant

wanted you to reconsider his sentence again. When he responded, "yes sir", you increased the suspension by another three months.

E. In State v. Floyd, Case No. 91-9012-T, you suspended Mr. Floyd's driver's license for one year and prohibiting him from obtaining a hardship license for running a stop sign.

F. In *State v. Cecil*, Case No. 91-4569-MM, as a part of your sentence, you ordered the defendant, a fisherman, to "get a real job, a paycheck job."

G. In State v. Thorne, Case No. 91-11344-MM, as a part of your sentence, you ordered "if wife goes out and stays out and comes home drunk and pushes him around and asks him to punch her in the head - he is not to punch her in the head."

H. In State v. Obremski, Case No. 91-02037-TC, as a part of your sentence, you ordered the defendant to purchase a bicycle for transportation.

I. In State v. Wilcox, Case No. 90-11858-MM, as part of your sentence, you ordered that the defendant purchase two bicycles and "cycle kid to school" if she missed the bus.

J. On or about October 18, 1991, you found William Fite guilty of contempt and sentenced him to six months incarceration for saying "you know how this county works. What Judge Graham says goes. What everybody else says, to hell with them." This

statement was made in open court and was directed to the Court in an official proceeding. After Mr. Fite was taken from the courtroom and while he was in the hallway of the courthouse, he made a comment that he "wanted a f__king lawyer to help." Thereafter, you had Mr. Fite returned to the courtroom, found him in contempt and sentenced him to another six months incarceration.

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K. You have repeatedly made unreasonable and improper demands of the Sheriff of Citrus County regarding security in your courtroom, and, on March 15, 1992, you summoned a supervisor from the Sheriff's Office to your courtroom. When Deputy Sheriff Amann arrived, you gave her instructions regarding future security arrangements in your court and threatened to hold her in contempt if she did not comply with your instructions.

The aforementioned conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF THE JUDICIARY.

> An independent and honorable judiciary is indispensable to justice in our society. A judge should

participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

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A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor or fear of criticism.

3. On various occasions you have acted in an undignified and discourteous manner toward litigants, attorneys and others appearing in your court. This allegation includes, but may not be limited to, the following:

A. On November 21, 1991, Ms. Patricia Myers, a local attorney, appeared before you in Case No. 91-922-SP with her client. You would not permit her to make an opening statement or otherwise address the Court. At the close of the case, in open court and in the presence of her client, you stated that she should be honest and advise her clients that they do not need an attorney in small claims court.

B. On January 11, 1991, Mr. James Sproles appeared in your court as a plaintiff in a civil action. After it was determined that Mr. Sproles had been arrested for a violation of probation, you called him a convicted felon in the presence of his family, stated that you would not consider his testimony and dismissed his case.

C. On April 17, 1990, in open court, you accused a local attorney, Charles Horne, of abandoning his client, repeatedly inquired of Mr. Horne if he was aware of his ethical obligations as an attorney and berated Mr. Horne for violation of his oath as an attorney.

D. On October 23, 1989, in State v.Nemeth, Case No. 89-04546-TC, after sentencing the defendant, you implied that the defendant did not need counsel in this case and

made repeated inquiries of the defendant, over the objections of counsel, regarding the financial arrangements of the representation.

The aforesaid conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF THE JUDICIARY.

> An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

> A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

> (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others which whom he deals in his official capacity and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.
>
> - PAGE 10 -

4. On various occasions you have conducted yourself in a manner which impugns the public perception of the integrity and impartiality of the judiciary. This allegation includes, but may not be limited to,the following:

A. It has been reported in the local media, particularly the September 15, 1988 edition of the Citrus County Chronicle, that you have stated that you will not accept a negotiated plea in a criminal case for any defendant whose attorney has criticized your methods in accepting such pleas and that you have advised attorneys of this fact in the course of hearings in your court.

B. It has been reported in the local media, including the St. Petersburg Times, Tampa Tribune and Citrus County Chronicle, that on or about May 12, 1989, while you were apparently the only

judge available in Citrus County, you declined to enter a restraining order in a domestic violence case, notwithstanding the fact that you secured jurisdiction to enter a similar order in a different case the previous day. When questioned by the media regarding your failure to seek proper jurisdiction to enter the order, you were reported as stating that the attorney seeking the order had repeatedly criticized you and that you were not going to do him any favors.

C. In State v. Webb, Case No. 91-8161-TC, you admittedly sentenced the defendant to an excessive period of incarceration and refused to mitigate the defendant's sentence based upon your perception that the defendant had been improperly released on his own recognizance from the Citrus County Jail.

D. In State v. Collins, Case No. 92-72-CF, Judge Thurman, a circuit court judge, and the trial judge, endorsed the amount of the bond on a capias at $5,000 and specifically noted

that the bond should not be changed. However, on February 18, 1992, at the first appearance, you increased the bond to $25,000 without the permission of Judge Thurman.

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

B. A judge should not allow his personal relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or authorize others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

A. Adjudicative Responsibilities.

> (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others which whom he deals in his official capacity and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

5. You have closed and attempted to close public proceedings and in doing so you instructed and threatened others to keep the proceedings secret.

A. In July of 1990, in State v.Downing, Case No. 90-5628-MM, you instructed the attorneys in the case to attend a conference relating to restitution at the Salvation Army Probation Office. You would not permit a newspaper reporter admission to the conference and when at least one of the attorneys present stated that he believed that the reporter should be permitted to attend, you canceled the conference and advised the reporter that a conference would not be held. A short time later the same day, you telephoned the attorneys and instructed them to report to your chambers. The reporter was not present and the conference relating to restitution continued in his absence.

B. In June of 1991, you advised certain courthouse personnel and the attorneys in State v. Barrett, Case No. 90-490-CF, of your intention to conduct a private conference without the presence of

the defendant and the public. You instructed and threatened those present to keep the conference secret and gave specific instructions not to advise any reporters of the

conference. The conference did not occur because your appointment as circuit court judge was revoked by the Chief Judge.

The aforesaid conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF THE JUDICIARY.

> An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

> A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

A. Adjudicative Responsibilities

> (1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor or fear of criticism.

6. You have engaged in ex parte communications with attorneys and parties.

A. In June of 1991, you engaged in at least one ex parte conversation with an Assistant Public Defendant regarding State v. Barrett.

B. In Case No. 89-385-SP, after announcing judgment for the plaintiff in the amount of $463.36 and costs, the defendant and his counsel left the courtroom. In their absence, you advised the plaintiff that she could keep the alleged defective pump for which you had just awarded her the purchase price.

The aforesaid conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

A. Adjudicative Responsibilities

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applica-

ble to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

Your conduct, as described above, if true, could impair the confidence of the citizens of the state of Florida in the integrity of the judicial system and could constitute a violation of Canons 1,2.A,2.B, 3.A(1),3.A(3) and 3.A(4) of the Code of Judicial Conduct.

WHEREFORE, your conduct as set forth in the above allegations could constitute conduct unbecoming a member of the judiciary and could demonstrate your present unfitness to hold the office of judge and/or could warrant discipline.

You are advised of the right to file a written answer to the above charges made against you within twenty (20) days of service of this Notice upon you pursuant to the provisions of

Rule 7(b) of the Florida Judicial Qualifications Commission Rules.

DATED this 7th day of August, 1992.

J. Klein Wigginton, Chairman
Florida Judicial Qualifications Commission
Room 102, The Historic Capitol
Tallahassee, FL 32301
(904) 488-1581

AND

Roy T. Rhodes, General Counsel
Florida Judicial Qualifications Commission
Room 102, The Historic Capitol
Tallahassee, FL 32301
(904) 488-1581
Fla. Bar #0066222

/s Roy T. Rhodes
Roy T. Rhodes

Terrance A. Bostic, Special Counsel
Fla. Bar #304336
Alicia J. Schumacher, Special Counsel
Fla. Bar #864330
BUSH ROSS GARDNER WARREN & RUDY, P.A.
220 South Franklin Street
Tampa, FL 33602
(813) 224-9255

/s T. A. Bostic
Terrance A. Bostic

DOCUMENT 22

Amendment to Notice of Formal Charges

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE:
NO. 91-415
CASE NO. 80,273

_____/

AMENDMENT TO NOTICE OF FORMAL CHARGES

TO: THE HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
ROOM 215, OLD CITRUS COUNTY COURTHOUSE
INVERNESS, FLORIDA 32650-4802

YOU ARE HEREBY ADVISED that the Florida Judicial Qualifications Commission, by a vote of at least seven members of the said Commission, at its meeting in West Palm Beach, Florida, on October 22, 1992, has determined pursuant to Rules 2(b)(2) and 7 of the Florida Judicial Qualifications Commission Rules that there is probable cause to amend the Notice of Formal Charges previously filed against you.

The Notice of Formal Charges filed in the case on August 7, 1992, is hereby amended to include the following:

2. On various occasions you have exceeded and abused the power of your office by imposing improper sentences and

improper use of your contempt powers. This allegation includes, but may not be limited to, the following:

L. In *State v. Segrest*, Case No. 87-235-CF, you found Segrest, a defendant in a criminal case, in contempt of court and ordered him imprisoned for 60 days for saying the word "bull" during the testimony of a witness in his trial.

M. In *State v. Oldag*, Case No. 88-09796-TC, as a part of your sentence, you required that Oldag perform 40 hours of community service for the State Attorney's Office and further stated that you would "suspend 10 hours community service if defendant washes [the] state attorney's car with the T-shirt he has on today."

N. In *State v. Stephens*, Case No. 89-6019-CC, you found attorney Harold Stephens in contempt of court and sentenced him to six months probation, a fine of $250 and forty hours of community service, for stating the world "bull" to an attorney while in the courtroom.

O. In *State V. Barth*, Case No. 89-10686-MM, as a part of your sentence, you ordered that Barth either give up her job as a

shrimper or spend 10 days in jail and in doing so stated "I know from my experience on the bench the type of people you associate with shrimping. I am trying to get her out of a particular life style."

P. In *State v. Douglas*, Case No. 90-8778-MM, as a part of your sentence, you entered an order prohibiting Douglas from having any contact with his children.

3. On various occasions you have acted in an undignified and discourteous manner toward litigants, attorneys and others appearing in your court. This allegation includes, but may not be limited to, the following:

E. On March 27, 1989, you exhibited rude, improper and inappropriate behavior in open court and in your chambers toward attorney Chip Harp by berating Harp because you did not believe he was appropriately dressed for court.

F. In *State v. Dobbs*, Case No. 92-6208-MM, you exhibited rude, improper, and inappropriate behavior in open court when you addressed the defendant's mother by stating "You know what his problem is, his problem is you. It is not me. It is you. I can tell that by the way you are defending him.

4. On various occasions you have conducted yourself in a manner which impugns the public perception of the integrity and impartiality of the judiciary. This allegation includes, but may not be limited to, the following:

E. In *State v. Jurick*, Case No. 89-10809, you revoked the driver's license of Bernard Jurick. Several months later, while in the Gathering Restaurant, located in Inverness, Florida, you overheard a conversation between Mrs. Jurick and another individual in which Mrs. Jurick mentioned that her husband had obtained a hardship driver's license. You suspected that the conversation was about Bernard Jurick, however, you did not know Mrs. Jurick and could not remember the defendant's name. You asked Mrs. Jurick to identify herself and when she declined to identify herself, you stated that you would "make it harder" on her husband when you determined his identity.

F. In *State v. Parker*, Case No. 90-4111-MM, the Assistant State Attorney assigned to the case was out of the courtroom when the case was called for disposition. You proceeded with the disposition of the case and did not consider the issue of restitution to the

victims. Later, the assistant state attorney assigned to the case advised you that restitution had been overlooked, that the victims were seeking restitution and requested that the court schedule a restitution hearing. You refused and stated "when we have court, the State Attorney is to be there."

G. In *State v. Hodge*, Case No. 90-4451-MM, the issue of restitution was not considered in the disposition of the case. When the State Attorney's Office filed a timely and otherwise proper motion to modify the sentence to include restitution, you denied the motion and berated the State Attorney's Office for being unprofessional.

H. Beginning in January, 1992, you sentenced individuals to imprisonment in the Citrus County Jail and granted them the privilege of leaving the confines of the jail to attend work or school pursuant to a work release program, knowing that the Citrus County Board of Commissioners had not established and the Sheriff of Citrus County had not consented to a work release program as required by the applicable Florida Statutes. The Sheriff of Citrus County found it necessary to resort to litigation as a result of your actions.

I. In *State v. Fitzgerald*, Case No. 92-07873-TC, you threatened to file a bar grievance against Assistant Public Defender Angela Miller if she filed a motion to disqualify you as presiding judge in the case. After she was removed due to a conflict of interest, you directed Miller and Assistant State Attorney Elizabeth Osmond to advise defendant's new counsel, Barbara Gurrola, that you would file a bar grievance against her if she filed a motion to disqualify you as presiding judge in the case. When Osmond and Miller declined to comply with your directions, you instructed the defendant to advise his new attorney of your statements.

J. You have used the power and prestige of your judicial office and the resources of the State of Florida to conduct a private, unofficial "investigation" into favoritism and corruption in the Citrus County courts. In furtherance of your investigation, you have requested that members of the public with information regarding local corruption contact you at your judicial office. Further, in conducting your investigation, you have utilized employees of the State of Florida, especially employees of the Office of the Clerk of Citrus County, to obtain driving records, vehicle registrations, various case files and other information. You

have not paid for this information or these services and you directed that the state employees keep your requests confidential from there supervisors.

6. You have engaged in *ex parte* communications with attorneys and parties. This allegation includes, but may not be limited to, the following:

C. In *State v. Mullins*, Case No. 89-00022, you increased Mullins' bail from $500 to $5,000 in the presence of his attorney, Chip Harp. After Harp left the courtroom, you continued the proceeding in the presence of the assistant state attorney and increased his bail from $5,000 to $10,000.

Your conduct, as described above, if true, could impair the confidence of the citizens of the state of Florida in the integrity of the judicial system and could constitute a violation of Canons 1,2.A, 3.A(3) and 3.A(4) of the Code of Judicial Conduct.

Your conduct, as described above, if true, could constitute conduct unbecoming a member of the judiciary and could demonstrate your present unfitness to hold the office of judge and/or could warrant discipline.

You are advised of the right to file a written answer to the above charges made against you within twenty (20) days of service of this Amendment upon you pursuant to the provisions of rule 7(b) of the Florida Judicial Qualifications Commission Rules.

DATED this 26th day of October, 1992.

J. Klein Wigginton, Chairman
Florida Judicial Qualifications
Commission
Room 102, The Historic Capitol
Tallahassee, FL 32301
(904) 488-1581

AND

Roy T. Rhodes, General Counsel
Florida Judicial Qualifications
Commission
Room 102, The Historic Capitol
Tallahassee, FL 32301
(904) 488-1581
Fla. Bar #0066222

s/ Roy T. Rhodes
Roy T. Rhodes

Terrance A. Bostic, Special Counsel
Fla. Bar #304336]
Alicia J. Schumacher, Special Counsel
Fla. Bar #864330
BUSH ROSS GARDNER WARREN & RUDY, P.A.
220 South Franklin Street
Tampa, FL 33602
(813) 224-9255

s/ T. A. Bostic
Terrance A. Bostic

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Amendment to Notice of Formal Charges has been furnished, by U.S. Mail, Certified no. P 731 068 760, to the Honorable Gary G. Graham, Room 215, Citrus County Courthouse, Inverness, Florida 32650-4802 on this 26th day of October, 1992.

s/ Roy T. Rhodes

DOCUMENT 23

Excerpts from Transcripts

of the Proceedings

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JUDGE GRAHAM: Under Rule 26--

JUDGE DAMRON: -- put up with.

JUDGE GRAHAM: -- I'm making and filing this -- my affidavit of disqualification for Commissioners Barnes, Kan, Tate, Burnstein, Mahon, Clark and Reiter, all supported by the affidavits of -- one, two, three, four, five, six -- seven affidavits of reputable citizens of this county.

THE CHAIRMAN: May I see the affidavits?

JUDGE GRAHAM: And furthermore, would proffer their live testimony in court today. They're present here to support their affidavits and the motion.

THE CHAIRMAN: Have you been served a copy of these, Mr. --

MR. BOSTIC: No, I have not. I have not seen them before.

THE CHAIRMAN: Mr. Bostic, you can have a seat for a second while I go ahead and read this for a second.

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MR. BOSTIC: Yes, sir.

THE CHAIRMAN: The affidavit has been filed by Judge Graham indicating that Mr. Tate was reading the newspaper; that Judge Burnstein and Nancy were talking; that Mr. --

JUDGE GRAHAM: Excuse me.

THE CHAIRMAN: Do not interrupt me, Judge, please -- that Mr. Clark was reading the newspaper during the proceedings and appeared to be sleeping at one -- at one -- and it's not completed. Number four, Commissioner Burnstein was reading the comics in the newspaper. Number five, Mr. Kaney was making nonverbal gestures at Chairman Reiter. Six, that Sybil Barnes appeared to be sleeping during the proceedings. Finally -- and he says finally, "These individuals were ready, willing, and able to testify before the Commission," and he has affidavits from a Helen Zebby, Z-e-b-b-y, George -- and I cannot read the writing --

MR. LIZANETZ: Lizanetz.

THE CHAIRMAN: -- L-i-z-a-n-e-t-z, Mr. Joe Bodi, B-o-d-i, and the last one is Alex I-l-n-y-z-k-y.

JUDGE GRAHAM: And Mr. Mason.

THE CHAIRMAN: All right. The Commission will not take testimony. This is outside the rules. The Commission, according to Rule 26, has already been challenged once in toto and in person, and the affidavit filed will be considered by a vote of seven or more of the Commissioners voting in reference to whether you want to have an excusal of any of these individuals.

JUDGE GRAHAM: May I respond?

THE CHAIRMAN: No, you may not. This is a non-debatable motion as far as I'm concerned.

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JUDGE KANEY: Can we take a break? We've used up the 20 minutes that --

THE CHAIRMAN: All right. Judge Graham, you had asked time to get something to eat. How much time -- I don't want to give an hour. Would 25, 30 minutes suffice?

JUDGE GRAHAM: In 25 or 30 minutes I couldn't even get up to McDonald's and back.

THE CHAIRMAN: Judge, there's restaurants right across the street.

JUDGE GRAHAM: I couldn't walk to the townhouse and back in 20 minutes. I need an hour's lunch just like any other individual.

THE CHAIRMAN: I will not give you an hour. I will give --

COMMISSIONER GILLMAN: What happened at 12:15?

THE CHAIRMAN: Where were you from 12:15 until you reconvened?

JUDGE GRAHAM: What are you talking about?

THE CHAIRMAN: I thought that Judge Yawn had broke until about 1 o'clock or something.

JUDGE GRAHAM: I was busy trying to get a hold of Mr. McKinney and Mr. White because

you folks were implying that you were going to put me in jail.

THE CHAIRMAN: I will give you 20 minutes of break. We are now breaking, and we will be back here at five -- actually, 22 minutes. We will be here at five minutes after three.

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JUDGE GRAHAM: I've lost that document that she just marked.

THE CHAIRMAN: It is not in the clerk's

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hands?

JUDGE GRAHAM: She was reading it, and that's the reason I couldn't find it. Let the record reflect that the Commission is laughing about that. Why it's funny that I couldn't find it --

THE CHAIRMAN: The Commission is not laughing. Please proceed.

* * *

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JUDGE GRAHAM: Mr. Chairman, after being in hearing from nine to six yesterday, from nine until 6:30 today, with the Chair only allowing me a 20-minute break, I am so exhausted right now that I cannot properly defend myself in these proceedings and would request that the Commission adjourn until tomorrow.

THE CHAIRMAN: No. I'm going to finish this witness. Judge, you had ample time to get ready, you had breaks during the lunch hour to do whatever you did, and we are going to continue.

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JUDGE GRAHAM: May I ask permission to note for the record that Ms. Barnes was sleeping again? And I tried to get the television to get her, but by the time I got over there, she woke up.

THE CHAIRMAN: All right. I am not granting you that permission. You already put that on the record.

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JUDGE GRAHAM: May I approach the bench sidebar?

THE CHAIRMAN: No sidebar. What do you want?

JUDGE GRAHAM: I want to ask permission to have my assistant stand ready with a camera and take a picture of Ms. Barnes the next time she goes to sleep.

THE CHAIRMAN: You will not disrupt this court; and that statement is incorrect, and you will continue. And no one will be brought forward in here. Ask your questions.

JUDGE GRAHAM: Is that permission denied?

THE CHAIRMAN: Permission for anyone to come forward and take photographs is denied.

JUDGE GRAHAM: Permission for her to take the photographs --

THE CHAIRMAN: Anyone. Do you understand?

JUDGE GRAHAM: Not coming forward; to just take the picture while she is sitting there.

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THE CHAIRMAN: There will be no pictures taken in this courtroom of any of the Commissioners by your personnel on this side of the bench -- I'm sorry, this side of the rail.

JUDGE GRAHAM:. Permission for Ms. Baarsma --

THE CHAIRMAN: I am not going to argue the issue anymore. Please proceed. You are intentionally delaying this trial, and you are pushing my patience, Judge Graham. This is conduct you would not allow in your own courtroom, and I'm not going to allow it in this Commission hearing. So stop it and proceed with the case.

JUDGE GRAHAM: I would like to make a motion for a mistrial. I think you have --

THE CHAIRMAN: The motion for a mistrial is noted, denied. Please proceed.

JUDGE GRAHAM: May I ask permission to make a statement for the record on that?

THE CHAIRMAN: All right. I am holding you in contempt for delay of this case. I am going to suggest to you that you have continuously disregarded the instructions of the Chair; you have intentionally delayed this

trial; you have made demeaning remarks to the Chair; you have not been paying attention to my instructions for orderly presentation of this evidence.

I am recommending to the sitting Judge Yawn to come here and show reason to you why you should not be held in criminal contempt. I am going to ask for incarceration of you as soon as Judge Yawn can come here. We will take that matter up as soon as he can get here.

Now, you will proceed. And I suggest strongly that you get your counsel here to represent you.

Mr. Rhodes, come forward.

(Discussion off the record.)

THE CHAIRMAN: The contempt occurred here. The request of General Counsel is that I was talking about civil contempt. You have done it in the presence of the Commission, in my direct presence; and I am going to ask for activity -- I mean, ask for the judge to so hold you in contempt.

Now, please proceed. That is one matter we will take up as soon as the judge gets here.

JUDGE GRAHAM: I'd ask permission for a

recess, because you've unnerved me, and I need a few moments to collect my thoughts.

THE CHAIRMAN: You will continue, please. If you are finished with your cross-examination, we will call the next witness.

JUDGE GRAHAM: I would like permission to make a motion for a mistrial.

THE CHAIRMAN: Make your motion.

JUDGE GRAHAM: I would move for a mistrial on this. These are the trier of fact, and you have made these statements threatening to put me in jail -- saying that you're going to ask to put me in jail. And at this point, it would be entirely unreasonable to expect these Commissioners to listen to my testimony or the testimony of my witnesses and believe them when you've made me out to be --

THE CHAIRMAN: Your objection is noted and denied. Please continue, Judge.

JUDGE GRAHAM: May I have permission to finish it?

THE CHAIRMAN: No. You have completed your objection. Please continue. You are not going to delay this trial anymore.

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JUDGE GRAHAM: I would like to clarify for the record -- I have received a transcript of our previous hearing proceedings, and I would like to clarify for the record that the man that grabbed me during the proceedings was Mr. Roy Rhodes, General Counsel for the JQC.

MR. RHODES: I did what?

JUDGE GRAHAM: Grabbed my arm, right

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here.

THE CHAIRMAN: All right. What else do you have to present?

JUDGE GRAHAM: Any objections to that? Anyone?

THE CHAIRMAN: Please continue.

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JUDGE GRAHAM: Excuse me. He interrupted the witness, and then -- Mr. Bostic and the Commission is doing this to him. When they start hearing an answer they don't like, they cut him off. Please let him answer.

THE CHAIRMAN: The objection is overruled. The Chair does not interpret that it was -- that his question was interrupted. Sir, if you feel that you need to complete your question, just let me know. I mean, if you --

THE WITNESS: Okay.

* * *

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JUDGE GRAHAM: This Commissioner is becoming an advocate for Mr. Bostic at this point, and it's clear. He doesn't like his testimony --

THE CHAIRMAN: You've stated --

JUDGE GRAHAM: -- And he's trying to impeach this witness.

THE CHAIRMAN: You've stated your objection. The objection is overruled. What was your answer to the question?

THE WITNESS: Well, can you please repeat the question?

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I would make a note for the record -- permission -- that Ms. Burnstein is looking at some type of calendar.

THE CHAIRMAN: Judge, would you please finish your proffer?

JUDGE GRAHAM: I would respectfully request --

THE CHAIRMAN: Are you finished with the proffer? We are going to conclude it if you don't continue with your proffer.

JUDGE GRAHAM: Okay. I will continue under protest. And that she's continuing to look at it.

THE CHAIRMAN: Judge, please do not be debating the issue with me. Finish your proffer.

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I object to the Commissioners whispering and talking, Burnstein and --

THE CHAIRMAN: Judge, please continue. I have asked you not to interrupt your proceedings in the presentation of your evidence. Please continue.

JUDGE GRAHAM: Okay. May I request the Chair, then, to request the Commissioners to stop reading books and talking and whispering when I am trying to present my evidence to them? Could you do that?

THE CHAIRMAN: The Commission is paying attention to you. I am not going to instruct them to do anything. They are well qualified to listen to the evidence and do what they have to do while sitting as Commissioners. So please proceed, Judge.

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BY JUDGE GRAHAM:

Q. Sir, as a result of your --

JUDGE GRAHAM: I would like the record to

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reflect that Ms. Burnstein is laughing at that.

THE CHAIRMAN: Judge, please do not be making observations in the record. If you want permission to do so, address it to the Chair, please.

JUDGE GRAHAM: I would address that to the Chair. I object, and I would move to disqualify Ms. Burnstein. She's been reading, and now she's giggling at the testimony, and I have no confidence whatsoever that she will be a fair and impartial trier of the facts.

THE CHAIRMAN: Your objection is overruled. Please proceed.

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BY JUDGE GRAHAM:

Q. Mr. Cury, are the character traits that you have shared with the Commission the type of traits that you believe are ones that are susceptible to great change?

MR. BOSTIC: Objection. Goes beyond the scope.

THE CHAIRMAN: Unfortunately I didn't hear the question. Would you repeat it, Judge?

BY JUDGE GRAHAM:

Q. Does a leopard change his spots, Mr. Cury?

THE CHAIRMAN: He can answer that.

COMMISSIONER Clark: Perhaps.

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A. Let me -- the gentleman who spoke as a member of the group of decision makers -- I would say yes, perhaps; however, let me analogize this way.

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A. I have several uncles.

Q. Is Charles Allen your uncle?

A. Yes, sir.

Q. Was he the property appraiser at that time?

A. Yes, sir.

JUDGE GRAHAM: No further questions.

THE CHAIRMAN: Mr. Bostic?

MR. BOSTIC: No questions.

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THE CHAIRMAN: All right. Is that correct, Mr. Bostic? Do you agree to that?

MR. BOSTIC: I agree to that, yes.

THE CHAIRMAN: All right. Next witness. So noted. The Commission knows that that is now evidence.

JUDGE GRAHAM: Horace "Bud" Allen.

THE CHAIRMAN: Judge, while we're waiting on this one-- which count is this? Is this on page 2?

JUDGE GRAHAM: This is as to the fact that doctors, lawyers, and influential --

THE CHAIRMAN: All right. That's on page 2, Item B, then. Right.

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HORACE "BUD" ALLEN, JR.,

being first duly sworn to testify the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY JUDGE GRAHAM:

Q. Good morning, sir.

A. Good morning -- or afternoon.

Q. Would you state your name for the Commission, please?

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A. Horace "Bud" Allen, Jr.

Q. Sir, sometime back in 1984, were you adjudicated guilty of driving under the influence by Judge -- then Judge Damron?

A. Not in '84.

Q. What year was it?

A. And it wasn't by Judge Damron. It was by Judge Hill in '85.

Q. Weren't you adjudicated and then it was dismissed and then you were readjudicated?

A. I don't remember that, no, sir. I know I was --

Q. And so if the Commission -- if the Florida Supreme Court's written opinion to that effect says that, they would be wrong?

A. I don't recollect. I did hire Bill Eppy to appeal one.

Q. Didn't you have a DUI conviction dismissed by Judge Damron which later had to be overturned because it was done without the State knowing about it? Yes or no?

A. I can't answer that honestly. I don't know what the outcome of it was, to be honest with you.

Q. And who is your uncle?

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PROCEEDINGS

THE CHAIRMAN: Good morning, everyone. The Florida Judicial Qualifications Commission is back in session on this matter in reference to Judge Graham's Supreme Court case, No. 80,273. We are starting today, and we are going to complete this hearing by Friday.

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JUDGE GRAHAM: Well, see, here's the trouble with that ruling. Okay? All right? That -- the idea that you don't need to proffer it because -- if the Florida Supreme Court rules that you don't have jurisdiction to hear

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affirmative defenses -- which I, quite frankly, find hard to believe they're going to rule that way -- but the assumption that, "Well, if they rule against me on the affirmative defenses, then I don't need to proffer" ignores the fact that -- as I had stated throughout the proceedings, that I fully intend to take this issue to the United States Supreme Court. And the United States Supreme Court has a right to hear what these witnesses would have actually said in determining whether or not these things should have been also accepted in the proffer.

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JUDGE GRAHAM: The selective-prosecution witnesses were the ones to show the things that Judge Edwards and Judge Thurman have done.

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which have been so much worse than anything I have done; to show that the reason that I'm being prosecuted is not because I'm unethical but because I speak up against the system, and the people who are entrenched in the system do not like the words that I say.

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JUDGE GRAHAM: Well, with Judge Edwards, I would say that I expect to go into all of his misconduct. That's what I would go into.

THE CHAIRMAN: Right. But you see, Judge, I've already -- the Commission has already ruled that that particular issue is something that we're not going to address, because that selective-enforcement issue -- the Commission has taken the position that it is not an affirmative defense.

Now, you say you won't have a record to take to whatever appellate court you may want

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to go through, either the state or the federal court, and all I can say to you is: If the Commission is in error, then they will give us the direction to do the right thing, I would presume.

JUDGE GRAHAM: Yes. But that's just the Florida Supreme Court decision.

THE CHAIRMAN: Well, even the federal court. If you -- if the federal court -- if you're saying that you need a record for

the federal court, which we're really -- that's not the function of this Commission hearing, is to preserve a record for the federal court. I mean, I know you've established a lot of arguments along that line, but I can't be gearing our Commission hearings for appellate review. I know you want to do that, but I can't do that.

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THE CHAIRMAN: No, Judge, because that's going into the area of selective enforcement and -- well, not so much selective enforcement as favoritism and politics in the administration of justice.

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(Recess from 1:18 p.m. to 1:25 p.m.)

THE CHAIRMAN: Please be seated. The affidavit has been filed, and I'm filing it with the clerk as matters that have been filed by Judge Graham. And the motion to disqualify the Commissioners, as indicated, is denied. Madame, would you hand this to the clerk.

JUDGE GRAHAM: I would like to state certain objections and reservations for the record.

THE CHAIRMAN: There are -- I will take no argument on it. Please proceed with questioning, Mr. Bostic.

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THE CHAIRMAN: Judge, ask your question. I'm not going to take any further argument on this.

JUDGE GRAHAM: Permission to note for the record that when I'm upset with attorneys for arguing, it's because they continue to argue after I allow them to make an argument, and that the Chair refuses to allow me to even make an argument in the first instance. May I have permission to note that?

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JUDGE GRAHAM: I object to the triers of fact --

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JUDGE GRAHAM: Again, I voice my objection to --

THE CHAIRMAN: All right, Judge.

JUDGE GRAHAM: -- the trier of fact impeaching my witnesses.

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DOCUMENT 24

Excerpts from Transcripts

of the Pre-trial Conference

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JUDGE GRAHAM: 1-D. "In open court and during a hearing in State v. Pfiester, you accused State Attorney Brad King of favoritism while he was an Assistant State Attorney in his handling of State versus Ortolano."

All of these statements are true. I'm going to prove it. I'm going to prove to you that there's politics and favoritism in the Citrus County Court system. It's been here forever, and the day it ended was the day I took office; and that the reason this selective prosecution has been made is so that the people who want it that way can get the court back to being a court of politics and favoritism.

And the entrenched politicians of this community didn't want me saying it, the Commission doesn't want me saying it because

I'm a judge, and now they don't want to even allow me to prove it.

MR. BOSTIC: Mr. Chairman, I would like to respond; and I have made this response in depositions, when I've made objections, at least five or six times.

Judge Graham seems to think that the allegations in 1-B, C, D, and E open up the door for him to march in and with any type of evidence to prove anything he can about politics and favoritism in the Citrus County Court, and that is just not accurate.

If you -- first of all, if you read

Allegation 1, before you even get to the A, B, or C -- "You have repeatedly used your position as a judge of the Citrus County Court to make allegations of official misconduct and improper criticisms against fellow judges, other elected officials and their assistants and others,

without reasonable factual basis or due regard for their personal and professional reputations. This allegation includes, but may not be limited to, the following:"

Then you get to Item B -- and let me take Item B for example. "In an article published September 15, 1988, in the St. Petersburg Times, several weeks before the election for State Attorney, you are quoted as saying, 'I know of attorneys and doctors who have been arrested for DUIs and have had their DUIs reduced to reckless driving, basically because they are doctors and lawyers.' According to the report, you refused to discuss specific cases."

Now, let's stop and look at that one. The only issue is what he knew on September 15th, 1988, with respect to the statement that he had made; i.e., he knew of doctors and

lawyers who had been arrested for DUIs and had their DUIs reduced to reckless driving. That is the issue, not how other people perceive the courts, not whether there has been politics or favoritism in the Citrus County courts since the beginning of time. The only issue is what he knew on September 15th, 1988, as the basis for the statement that he made from the bench.

Item C. "On February 20th, 1991, in open court and during a hearing in the case of State v. Pfiester, you accused the Office of the State Attorney of 'routinely regulating' DUI offenses of lawyers and doctors to reckless driving 'for no apparent reason.'"

Again, the only issue is: What is his basis for making that statement? And what he attempted to do during the course of discovery was to bring in -- I don't know -- about 35 lawyers and ask them, "Have you ever been arrested for DUI? Has anyone in your family

ever been arrested for DUI?" That's not the issue. The issue is what he knew when he made these statements and what the factual basis was.

And when I say "what he knew when he made

the statements," I don't mean what he knew about or what he thought about the general atmosphere of politics and favoritism in Citrus County. It's what he knew about the specific statement that he was making at the time he made it.

You've got to freeze it in time. September, 1988, you made a statement you know of doctors and lawyers who have had their DUIs reduced for reckless and careless driving, period. Very limited issue.

And I submit that the only way that there will ever be a reasonable basis for him making the statement is for him to take that witness

stand and testify as to who those doctors and lawyers were that he knew of in 1988. And if he chooses not to do so in his own case, then B is proven.

The same argument, Mr. Chairman, relates also to C, D, and E.

JUDGE GRAHAM: Mr. Chairman, the Commission is in a real pickle on this. You see, this is a democratic country. I'm an elected public official. I never dreamed that a judge in a discussion with a newspaper

reporter or -- excuse me -- that a judge could never state that there was politics and favoritism in the court system and be called on the carpet and say, "You prove it."

My understanding is that the Commission has the burden, through clear and convincing evidence, to prove it's not true. Despite the fact that they have not put one piece of

evidence -- oh, excuse me. Yeah. They had Brad King say -- "You ever been involved in politics and favoritism?" and he said, "No." Boom. That's the clear and convincing evidence that Mr. Bostic wants to carry the day with. Mr. King said, "No." "Okay. Fine." I expect the Commission, because of my constitutional arguments, to buy that; that that's clear and convincing evidence that what I said was not true.

THE CHAIRMAN: Why do you feel the Commission is going to buy that?

JUDGE GRAHAM: Because I feel that this Commission is prejudiced against me because of the institutionalized way it is organized; the fact that they hear for years -- they hear all the complaints of every disgruntled litigant

and every political opponent I've beat at the elections. And it sits there and hears one

side of the story for six years, and then, boom, it gets fed up; it gets a couple of newspaper editorials sent to it saying, "Gee, where's the JQC?" and it -- enough said? Okay.

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JUDGE GRAHAM: I have certain objections that I wanted to put on the record.

THE CHAIRMAN: Well, you can -- I'm going to make my observations of what has occurred here on the evidence and on what the Motion Committee has decided they're going to do and procedures, so -- after that, I am not going to take any argument on it, and the ruling is going to stand; and you can make your objections on the record, but I'm going to leave. And, Ms. Court Reporter, if he wants to put something on the record, you certainly should take it down.

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THE CHAIRMAN: B. On a proffer, I should say; that will be proffered.

Item No. 95 will be proffered before being offered. 96,97,98 will be allowed. Items 106,109, and 113 will be allowed. Items 114,115,116,117,119,120,121, and 122 will be allowed. Items 131,133,134 will be allowed.

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THE CHAIRMAN: Well, I have announced the Motion Committee's actions in reference to the motion in limine in that, as I explained to you, they have granted it in part, and I recited to you what was granted and what was not granted, and I'm not going to repeat them again. They're in that record. And if you don't think that record will suffice, then all I can say is you can bring it to my attention again. I'm sure I will be around, and the Motion Committee will be around. Okay? I have to leave now, so I'm going off the record. She didn't get her break, so let the court reporter stretch her fingers for a couple of minutes.

JUDGE GRAHAM: Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you, Judge.

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(Recess from 5:39 p.m. to 5:41 p.m.)

JUDGE GRAHAM: I'd like to voice my objections to the proceedings on the record as allowed by the Chairman.

I would bring to the appellate court's attention that I'm standing in a hearing room before the bench, with no presiding official, making these statements. This is yet another first in my experiences in process of law. I'd also -- let the record reflect that Special Counsel has left.

Mr. Bailiff, could you close the door? Mr. Bailiff, could you have that door closed, too, because of the --

As I was saying, this is -- Mr. Bostic and General Counsel have left, and I'm here arguing objections to the proceeding to Madame Court Reporter alone. This is yet another first in my experiences of what is supposed to be a process of law with the Judicial Qualifications Commission.

I've never before been involved in any proceedings where motions were heard without notice and without hearing, where the dispositions are approved by the Commission

without notice of their hearing date, without an opportunity to argue the rulings of the Motion Committee, and where proffers are

made after -- both evidence, relevancy, and objections are made to an empty courtroom after everyone leaves. I've never seen that done before, and I just hope it will convince the appellate courts that we are not proceeding according to any rules of law or procedure known to advocates of law.

I object, Mr. Chairman, to the fact that this motion in limine was somehow decided upon by the Motion Committee. I've never seen the Motion Committee -- excuse me -- this motion in limine with respect to this evidence; not the filed motion in limine, but the motion in limine which has been argued these past nine hours.

I never saw a member of the Motion Committee here except for chairman Reiter. If he had any discussions with the members of the Motion Committee, I don't know what they were. I wasn't given an opportunity to challenge anything that he said to them. I was not willing to make arguments of law to the other

Motion Committee members. And somehow or other, the Motion Committee was able to basically destroy my case and prevent me from defending myself, and I have no idea on what basis they did that.

I would restate my objections to that process based on the decisional authority of Hastings v. United States and Nixon v. United States where the United States Supreme Court has stated that where a deliberative body is created by the constitution, that it is an impermissible denial of due process and unconstitutional to delegate a subgroup to make those deliberative functions -- deliberative decisions. In this case we've had both an institutionalized delegation of that authority followed by an ad hoc delegation of that authority.

First, the Commission, by its own rules, allowed motions to be heard by a three-member group, thus denying the respondent judge the benefits of the diversity of representation contemplated by the Florida State Constitution and his right for the full body to hear the evidence and the arguments -- that's an

institutionalized problem. It's inherent in the rules -- followed by the fact that in today's proceedings, evidently the Motion Committee itself subdelegated its authority to Mr. Reiter. And, of course, as I pointed out Mr. Reiter is an individual who has twice threatened me with contempt and, in his words, recommended that I be

incarcerated. So I hope that the appellate courts will understand the degree of derogation that has been imposed on my fundamental right to constitutional procedures and due process of law.

I would object to the massive intrusion into the defense of this case, represented by the rulings on evidence, in which I'm fundamentally not being allowed to raise any affirmative defenses, and I'm not being allowed to present collateral, circumstantial, and corroborative evidence into the record.

I would also note for the record that Special Counsel had an opportunity months ago, when the affirmative defenses were filed, to respond to those pleadings by a motion to strike. Special Counsel chose not to strike the affirmative defenses. Special Counsel

chose to deny them. That closed the pleadings on or about December 30th. Now, the effect of not striking the affirmative defenses but denying them was to put them at issue.

And then, by Special Counsel's count, respondent judge then proceeded to take 81 depositions in approximately 35 days, many of which were directed to his affirmative defenses. Furthermore,

respondent judge set about obtaining court files, audio transcripts, preparing transcripts of audio tapes, and obtaining -- strike that -- pursuing very expensive, time-consuming efforts toward proving his affirmative defenses.

And then, to compound the fact that the Commission has dismissed almost half of the charges brought against the respondent judge, it then says, "Not only have you wasted all that time, effort, and money toward 19 charges which we abandoned, but now all the time, effort, and money you have spent toward your defense on the affirmative defenses is wasted." And fundamentally, the Commission has taken the position that all that's at issue is: Did you say it? And, in our view, is it

unethical.

And I am now in a position where, basically, I have nothing really to defend myself with; and I hope that the appellate courts will recognize this as substantial evidence of this Commission's real prejudice and bias against me, a prejudice which comes from the fact that I have, as part of what I thought were my ethical obligations to stand up for the integrity and independence of the

judiciary, to criticize misconduct of those before the court and that those criticisms included criticisms of attorneys and judges and others involved in the court system and that now I am being judged by attorneys and judges and influential people.

And they not only are a group of attorneys and judges and influential people who are going to be my judges, but they are the people or the individuals or the institution that investigated and decided to charge me. And it seems apparent to me that the problem is: This Commission now does not want to face the reality that it made a mistake, and the way to avoid that reality is to not allow this

respondent judge to defend himself.

I don't believe the Commission wants to hear how bad the conduct of some attorneys have been in this county, I don't think they want to hear about the politics and the favoritism in this small, rural county, and I don't think they want to know the truth. I think that this Commission just wants to find me guilty of misconduct.

And I would renew all of my previous objections to these proceedings, to the fundamental lack of fairness of them, and to the

denial of my due process rights to make a defense against these false and trivial charges. End of objection.

(Proceedings conclude at 5:52 p.m.)

* * *

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THE CHAIRMAN: All right. We'll take a five-minute break -- five or ten minutes, Mr. --

JUDGE GRAHAM: It takes ten minutes to get to my office.

THE CHAIRMAN: All right. Ten-minute break.

(Recess from 4:54 p.m. to 5:05 p.m.)

THE CHAIRMAN: All right. Are you ready, Judge Graham and Mr. Bostic -- about the Chair's recommendations and some information

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I'll bring to you from the Motion Committee.

JUDGE GRAHAM: I'm ready for information from the Motion Committee.

THE CHAIRMAN: I'm going to tell you certain things that have occurred and that will occur, and I want to have your undivided attention. I want you to be able to write this down, because I

don't want to go into a great debate with it. When I tell you what the rulings are, I want you to understand what I've ruled.

I will not take argument after I make the Commission's findings -- or the Commission's recommendations -- known. I will not entertain any further argument today.

And what I'm going to do is first tell you -- Judge, would you mind --

JUDGE GRAHAM: Can I have a point of clarification?

THE CHAIRMAN: Yes. Go ahead.

JUDGE GRAHAM: Do I understand that you're not going to allow me to argue before or after you give me the rulings?

THE CHAIRMAN: Right. The arguments have been made, and we're going to take if from

there.

JUDGE GRAHAM: I have certain objections that I wanted to put on the record.

THE CHAIRMAN: Well, you can -- I'm going to make my observations of what has occurred here on the evidence and on what the Motion Committee has decided they're going to do and

procedures, so -- after that, I am not going to take any argument on it, and the ruling is going to stand; and you can make your objections on the record, but I'm going to leave. And, Ms. Court Reporter, if he wants to put something on the record, you certainly should take it down.

All right. The first thing is that, you know, we will proceed next Tuesday here at 9 o'clock in this courtroom to complete the proceedings, and the proceedings are designated to be completed by Friday.

Secondly, the Motion Committee has reviewed all the pleadings θhat are in the file, obviously, and have reviewed the motion in limine. And the motion in limine is going to be granted in part in that the Commission will not adjudicate the issue of

constitutionality of the Code of Judicial Conduct or the constitutionality of this Commission. This Commission will not adjudicate selective enforcement.

JUDGE GRAHAM: Mr. Reiter, I can't write that fast. If I could --

THE CHAIRMAN: All right. Go ahead.

JUDGE GRAHAM: Code of conduct. Also of the Commission itself --

THE CHAIRMAN: Yes.

JUDGE GRAHAM: -- or selective prosecution. Okay. Thank you, sir.

MR. RHODES: In the interest of helping the judge and the Chairman, I've asked the court reporter if she could transcribe your announcements first thing tomorrow. She has assured me that she could, and we could make that available to Judge Graham and to Special Counsel.

THE CHAIRMAN: Further, the Commission is going to only consider testimony that deals directly with the allegations raised in the pleadings by the Commission of Special Counsel in reference to the remaining -- I believe it's 26 statements of -- allegations of fact with

the six areas that are complained of violation of the code.

Now, as far as limitation of witnesses are concerned -- there has been several witnesses that have been listed -- over 400 witnesses listed -- by the Respondent, Judge Graham; and the

Commission will not take any testimony as to witnesses that are defined as witnesses who will testify as to their percipient observations of the administration of justice in Citrus County Court. I'm not sure what that term means -- "percipient" -- but that is not -- those 250 witnesses will not be testifying as to their opinions in this case; however, you may allow -- we have allowed that you will -- strike that. You will be allowed to present testimony of the character witnesses as defined in the prior order -- the two character witnesses -- and three witnesses as to opinions as to any alleged violations of the Code of Judicial Conduct.

Further, the Commission will not adjudicate the issues of, quote, vagueness, end quote, of the Code of Judicial Conduct and will not accept testimony of judges as to that

issue.

As to testimony involving any factual impeachment, that certainly will be accepted, or any witnesses that go to credibility of evidence that's been presented. The Commission will not take any evidence whatsoever from members of the Commission on the

alleged misconduct of the Commission as has been suggested by Respondent.

The Commission will not take any testimony on the issue of selective prosecution, so any witnesses that deal with selective prosecution and/or the alleged Commission conduct will not be heard; however, Judge Graham, you have a right to supplement these proceedings with testimony and/or presentation of evidence, at the close of the evidence that is presented, solely for the purpose of the allegations made in the consolidated charges that are now pending that have been reduced to 26.

So after that presentation of evidence, when you're finished presenting your witnesses and Mr. Bostic has completed any evidentiary proceedings that he's going to present in

rebuttal, if there is any allowed, you may then present to the record as a supplement for whatever purpose -- proffer that testimony and/or exhibits that you think should go up to the Supreme Court; but the Commission will not listen to that, and we will not -- I will not chair that proceeding. It's simply that you may do it. You may, if so stipulated with Mr. Bostic, bring into the record, by your

own testimony -- I mean, by your own statement -- what the witnesses would have testified to.

Now, as far as limitation of witnesses are concerned, other than the character witnesses and the opinion witnesses I've mentioned earlier, in reference to allegations dealing with attorney misconduct -- more particularly as to Count 1 -- you may present testimony as to those attorneys' misconduct that occurred prior to that date that you had knowledge of and that was the basis of your opinion. We will not take -- the Commission will not take testimony of events occurring after that date when there are no charges pending for -- against Judge Graham for any alleged misconduct after, I believe, August of

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1988. We would want to limit the live testimony of the attorneys' misconduct to three live witnesses to support that allegation.

* * *

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* * *

THE CHAIRMAN: All right. Now, it is my intent, once again, to start at 9 o'clock, to take a morning break, to go to lunch

in the afternoon, and then to go as late as we deem with that particular day or presentation of the evidence; but it's the Commission's intent to finish this matter by Friday.

JUDGE GRAHAM: One point of clarification?

THE CHAIRMAN: Sure, Judge.

JUDGE GRAHAM: After you leave, I'm supposed to voice my objections for the record?

THE CHAIRMAN: Yes, Judge. If you want to do it now, fine. I'm not going to rule on anything. If you want to preserve your record, you're welcome to do it; but maybe the court reporter would like to stretch her fingers for two minutes before you do that.

Thank you very much.

DOCUMENT 25

Excerpts from Transcripts of Proceedings

Before the JQC

July 31, 1992

(Second Rule 6b Hearing)

FLORIDA JUDICIAL QUALIFICATIONS
TALLAHASSEE, FLORIDA

IN RE: #91-415
- - - - - - - - - - - - - - - - -

TRANSCRIPT OF:	PROCEEDINGS
DATE:	July 31, 1992
PLACE:	Tampa Airport Marriott Hotel Charlotte Room Tampa, Florida
TIME:	Beginning at 9:32 a.m.
REPORTED BY:	Terri Dukes Notary Public State of Florida at Large

---

RICHARD LEE REPORTING
Registered Professional Reporters
501 East Kennedy Boulevard • Suite 910
Tampa, Florida 33602
(813) 229-1588

[Exhibit 115]

where is Mrs. Mahon?

JUDGE GILLMAN: Look at your chart.

JUDGE GRAHAM: I -- what is your profession?

VICE CHAIRMAN REITER: The Commission will not answer questions.

JUDGE GRAHAM: I see. Well, it wasn't really a question. I just wanted to be introduced.

VICE CHAIRMAN REITER: Well, you were directing a question to her, and our procedures are such that you may make a presentation of your case, your evidence, as you want to do it, and then we will ask you questions.

JUDGE GRAHAM: May I ask, is there anyone on this Commission who has experience in or is related to the newspaper business?

VICE CHAIRMAN REITER: The Commission will not accept questions from you. Suffice to state that everyone sitting here has been validly appointed to the Judicial Qualifications

Commission by their respective judicial conferences or by the Governor or by The Bar.

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JUDGE GRAHAM: May I proffer the questions that I intend to ask of the members?

VICE CHAIRMAN REITER: You have a right to proffer.

JUDGE GRAHAM: Is there anyone on the Commission who has experience in or is related to the newspaper business? It was then my intention to ask Judge Wigginton, have you read or otherwise been exposed to any newspaper articles or editorials about me? If his answer was yes, I was going to ask him which ones and the dates.

The second question would be, have you read or otherwise been exposed to any newspaper articles or editorials criticizing the JQC for not sanctioning me? If his answer was yes, I was going to ask him the name of the publication and the date.

Question three, has any newspaper editor or journalist filed a complaint, written a letter or talked to you about me? If his answer was yes, I was going to ask him the name, publication and date of what was said.

My next question would be, has any justice or any judge of the State of Florida either filed a complaint, written a letter or talked to you about me? If the answer was yes, I was going to ask the name, the publication, the date and what was said.

The next question would be, has any State Attorney, Public Defender, County Sheriff, law enforcement officer or their assistants or deputies either filed a complaint, written a letter or talked to you about me? If the answer was yes, I was going to ask him their name, their title, the date and what was said.

Has any elected official either filed a complaint, written a letter or talked to you about me? If his answer was yes, I was going to ask him the name, the title, the date and what was said to him.

The next question, has any individual -- excuse me -- I was going to ask him, sir, you have read the charges in the Amended Notice of Investigation. Do you know anything about my case other than the charges contained in the Amended Notice either through your own personal knowledge or by discussion with

anyone else? If his answer was yes, I was going to ask him what that was.

The next question was going to be, are you acquainted with me?

The next question was going to be, counsel representing the Commission is Mr. Roy Rhodes. Are you acquainted with him? And the extent of his acquaintance.

The next question would be, do you believe that it is unethical for a judge to try to be creative or have unusual sentences as alternatives to jail sentences? If his answer was yes, I was going to ask him to further explain himself. If his answer was no, I was going to ask him to further explain himself.

The next question would be, do you believe that it is unethical for a judge to criticize others? If his answer was yes, I was going to ask him to explain himself. If his answer was not, I was going to ask him to explain himself.

The next question would be, have you ever voted after a JQC trial to completely acquit a judge? If his answer was yes or no,

I was going to ask him further specifics.

The next question would be, in the time you have been on the JQC, has the Commission after a trial ever voted to completely acquit a judge? If his answer was yes or no, I was going to ask him to further explain and give details.

Have you ever made a speech or a public presentation or prepared any writing explaining the functions and duties of the JQC? If his answer was yes, I was going to ask him particulars.

The next question would be, did your presentation, speech or writing contain a position that the JQC has a duty to ensure that judges are not unfairly accused?

The next question would be, did your presentation, speech or writing contain a position that the JQC has a duty to ensure that these proceedings were not used for political purposes?

The next question would be, counsel to the Commission is Mr. Terry Bostic. Are you acquainted with him? If his answer was yes, I I was going to ask him for further details.

The next question would be, are you acquainted with any other member of the JQC? If his answer was yes, I was going to ask him for particular details.

The next question would be, are you related by blood or marriage or have a social or business relationship or a close acquaintance with any complainant or witness in this case? If his answer was yes, I was going to ask him for further details.

The next question would be, have you ever won a contested election for public office? If his answer was yes, I was going to ask him the position, when and where.

The next question would be, have you ever been jailed, place on probation, fined or otherwise sanctioned by a judge? If his answer was yes, I was going to ask him further particulars.

The next question would be, have you ever been a civil litigant? If his answer was yes, I was going to ask him further particulars.

The next question would be, has a judge ever rendered an adverse ruling involving your

interest in civil litigation? If his answer was yes, I was going to ask him particulars.

The next question would be, have you ever been arrested for a DUI? If his answer was yes, I was going to ask him for further particulars.

The next question would be, have you ever received a traffic or parking ticket? If his answer was yes, I was going to ask him further particulars.

The next question would be, do you know of any of your friends or relatives or of any judge, lawyer or influential person who has been arrested for a DUI and had his case dismissed or reduced to a lesser offense? If his answer was yes, I was going to ask him for further particulars.

My next question would be, do you have any knowledge whatsoever concerning the facts of this case whether garnered from newspaper, radio, television or rumor? If his answer was yes, I was going to ask him for further particulars.

My next question would be, have you ever had a judicial decision reversed on appeal?

If his answer was yes, I was going to ask him for his particulars.

The next question would be, have you ever had a judicial decision reversed for, quote, abuse of discretion? If his answer was yes, I was going to ask him for particulars.

My last question would be, have you ever been the subject of or mention in a newspaper article or editorial? If his answer was yes, I was going to ask him for full particulars.

Mr. Chairman, it was my intention to voir dire each member of the Judicial Qualifications Commission with respect to these same questions. It is my understanding that the Commission would not allow that. Is that correct?

VICE CHAIRMAN REITER: That's how the Chairman rules.

JUDGE GRAHAM: At this time, I would like to make an objection for the record. I object that the refusal of the Committee to answer these questions violates both the procedural and substantive due process rights of both the Federal and State Constitution and to the rights of freedom of expression.

* * *

DOCUMENT 26

Answer to Affirmative Defenses

and

Motion to Strike Demand for Jury Trial

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

IN RE INQUIRY CONCERNING

CASE NO. 80,273

A JUDGE, NO. 91-415

/

ANSWER TO AFFIRMATIVE DEFENSES AND MOTION TO STRIKE DEMAND FOR JURY TRIAL

The undersigned counsel for the Judicial Qualifications Commission ("Commission") hereby denies the affirmative defenses raised in Respondent's Answer, Counterclaim and Demand for Jury Trial dated December 18, 1992 and further moves to strike Respondent's Demand for Jury Trail on the basis that the Constitution of the State of Florida and the applicable Rules do not provide for the requested jury trial.

Respectfully submitted,

Terrance A. Bostic, Esq.
Alicia J. Schumacher, Esq.
220 South Franklin Street
Tampa, Florida 33602
(813) 224-9255
Attorneys for the Judicial Qualifications Commission

By: /s/Alicia J. Schumacher
Terrance A. Bostic
Fla. Bar #304366
Alicia J. Schumacher
Fla. Bar #864330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail delivery to Judge Gary Graham at Old Citrus County Courthouse, Room 215, Inverness, Florida, 32650-4802 and to Roy Rhodes, Esq, General Counsel, the Florida Judicial qualifications Commission, Room 102, The Historic Capitol, Tallahassee, Fl 32399-6000, this 30th day of December 1992.

/s/ Alicia J. Schumacher
Attorney

DOCUMENT 27

Order Granting in Part Motion

In Limine and Limitation of Witnesses

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

IN RE INQUIRY CONCERNING

CASE NO. 80,273

A JUDGE, NO. 91-415

/

ORDER GRANTING IN PART MOTION IN LIMINE AND LIMITATION OF WITNESSES

ORDERED AND ADJUDGED the Motion in Limine filed by Special Counsel for the Judicial Qualifications Commission is granted in part and the Commission will not consider the issues of constitutionality of the Judicial Qualifications Commission, the constitutionality of the Judicial Code of Conduct, the alleged vagueness of the Judicial Code of Conduct, the alleged selective enforcement of the Judicial Code of Conduct, the alleged and observations of the Administration of Justice and alleged favoritism in Citrus County Court except as herein stated.

Testimony will be accepted as to character witnesses as previously indicated in the Commission's prior Order. The respondent Judge will be allowed up to three witnesses as to the allegations of politics and favoritism as alleged in Item 1D of the Consolidated Statement of Charges and 1E (State v. Ortolano and State v. Phiester). Additionally, up to three witnesses will be

allowed to render opinions as to the alleged violations of the Judicial Code of Conduct.

DATED this 18th day of February, 1993, NUNC PRO TUNC 3/25/93.

/s/ JJR
(JJR)

FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION - MOTION COMMITTEE

By: /s/ Joseph J. Reiter

Joseph J. Reiter, CHAIRMAN
Florida Judicial Qualifications Commission
Room 102 - The Historic Capitol
Tallahassee, FL 32399-6000
(904) 488-1581

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Judge Gary Graham, Post Office Box 519, Inverness, FL 34451-0519, and to Terrance A. Bostic, Esq., Post Office Box 3401, Tampa, FL 33601-3401, this 30th day of March 1993.

/s/ Roy T. Rhodes
Special General Counsel

DOCUMENT 28

Florida Judicial Qualifications

Commission Rules

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION RULES

Adopted by the Commission May 18, 1984

Accepted by the Supreme Court September 13, 1984 (458 So.2d 1116)

RULE 1. SCOPE AND TITLE

These rules apply to all proceedings before the Judicial Qualifications Commission involving the discipline, retirement or removal of justices of the Supreme Court, and judges of the District Courts of Appeal, Circuit Courts, and County Courts pursuant to Article V, Section 12 of the Constitution of the State of Florida, as amended, and removal or disqualification of members of the Commission. These rules shall be known as Florida Judicial Qualifications Commission Rules and may be abbreviated as "FJQCR".

RULE 2. DEFINITIONS AND VOTE

(a) In these rules, unless the context or subject matter otherwise requires:

(1) "Commission" means the Judicial Qualifications Commission.

(2) "Judge" means a justice of the Supreme Court and a judge of the District Court of Appeal, Circuit Court and County Court.

(3) "Chairman" includes the acting chairman.

(4) "General Counsel" means any member of The Florida Bar designated by the Commission to serve as legal advisor to the Commission, and to perform such other duties as authorized by the Commission.

(5) "Counsel" means any member(s) of The Florida Bar designated by the Commission to gather and present evidence before the Commission with respect to the charges against a judge and to represent the Commission in all proceedings, including investigations.

(6) "Shall" is mandatory and "may" is permissive.

(7) "Mail" and "mailed" include ordinary mail and personal delivery.

(8) The masculine gender includes the feminine gender.

(9) "Member" means a member of the Commission.

(b) Vote required:

(1) Unless otherwise provided in these rules, Commission actions shall be by a majority vote of the members present and voting.

(2) A finding of probable cause against a judge or recommendation of suspension of a judge shall be by an affirmative vote of note less than seven (7) members.

(3) A finding that a judge is guilty shall be by an affirmative vote of not less than nine (9) members.

(4) The recommendation of discipline following a finding of guilty shall be by an affirmative vote of not less than nine (9) members.

(5) The removal of a member of the Commission shall be by an affirmative vote of note less than seven (7) members.

RULE 3. MEMBERSHIP AND JURISDICTION

(a) The membership of the Commission shall be as prescribed in Article V, Section 12 of the Constitution of the State of Florida and for such term as prescribed by general law. When a judge ceases to be a judge of the court from which he was appointed or whenever any member becomes otherwise ineligible to hold office, his membership on the Commission shall terminate. The Chairman shall promptly notify the appointing authority of the vacancy. In the event of a vacancy the Commission shall appoint a temporary replacement from the same category until such time as the appointing authority shall duly certify to the Commission a replacement for the remainder of the term.

(b) The Commission shall have such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or hearing, including the power to compel the attendance of witnesses, to take or to cause to be taken the deposition of witnesses, to order the production of books, records or other documentary evidence, and the power of contempt. In any matter within the jurisdiction of the Commission requiring the appearance of any person before the Commission or any member, any member shall have the power to issue subpoenas and to administer oaths and affirmations to such persons.

RULE 4. OFFICERS OF THE COMMISSION

The Commission shall elect a Chairman and a Vice-Chairman, each of whom shall serve for a term of two years. The Vice-Chairman shall act as the chairman of the Commission in the absence of the Chairman. The Commission may appoint an executive director and a General Counsel.

RULE 5. QUORUM OF COMMISSION

A quorum for the transaction of business by the Commission shall be seven members except as otherwise provided in these rules.

RULE 6. COMPLAINT AND INVESTIGATION

(a) The Commission, upon receiving factual information, not obviously unfounded or frivolous, or an individual complaint made under oath, indicating that a judge is guilty of willful or persistent failure to perform his duties, or conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or that he has a disability seriously interfering wit the performance of his duties, which is, or is likely to become, permanent in nature, may make an investigation to determine whether formal charges should be instituted.

(b) The judge has no right to be present or to be heard during an investigation, but before the Commission determines that there is probable cause to initiate formal charges, the judge shall be notified of the investigation, the general nature of the subject matter of the investigation, and shall be afforded reasonable opportunity to make a statement before the Commission, personally or by his attorney(s), verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct or disability. The judge shall not have the right to present other testimony or evidence, and he shall not have the right of confrontation or cross-examination of any person interviewed, called or interrogated by the Commission. Such notification shall be given personally or by registered or certified mail addressed to the judge at his chambers or, if returned undelivered, at his last known residence.

(c) The Commission shall have the right to require a judge to meet with it on an informal basis in reference to matters that relate to his judicial duties.

(d) When a judge has received a notice of investigation, notice to appear before the Commission, or

requested such notification, if the investigation does not disclose probable cause to warrant further proceedings, the judge shall promptly be so notified.

(e) The Commission shall have access to all information from all executive, legislative and judicial agencies, including grand

juries. At any time, on request of the Speaker of the House of Representatives or the Governor, the Commission shall make available all information in possession of the Commission for use in consideration of impeachment or suspension, respectively.

RULE 7. FORMAL CHARGES-- PROCEEDINGS

(a) If the Commission finds probable cause that formal charges should be filed against the judge, it shall designate one or more Counsel who shall prepare appropriate papers and pleadings, gather and present evidence before the Commission with respect to the charges against the judge, and otherwise act as counsel in connection with the prosecution of the charges against the judge, including the representation of the Commission in connection with any Commission or judicial proceedings. It shall direct Counsel to cause to be served on the judge a copy of the Notice of Formal Charges. Such proceedings shall be entitled:

"BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION"

"Inquiry Concerning a Judge, No. ____"

(b) The notice shall be issued in the name of the Commission and specify in ordinary and concise language the charges against the judge and allege essential facts upon which such charges are based, and shall advise the judge of his right to file a written answer to the charges against him within 20 days after service of the notice upon him.

(c) Service shall be made personally or by registered or certified mail addressed to the judge at his chambers or, if returned undelivered, at his last known address.

(d) After formal charges have been instituted, any notice or other material shall be mailed to the judge at his residence address or to his attorney(s).

RULE 8. SUSPENSION OF JUDGE

Subsequent to the filing of the notice of investigation, or upon or after the filing of the Notice of Formal Charges, the Commission may, in its discretion, issue its order directed to the judge ordering him to show cause before the Commission why the Commission should not recommend to the Supreme Court that he be suspended from office, either with compensation or without compensation, while the inquiry is pending. The order to show cause shall be returnable before the Commission at a designated place and at a time certain, at which place and time the Commission shall consider the question of suspension. Thereafter, the Commission, not less than seven (7) members concurring, may recommend to the Supreme Court that the judge be suspended from performing the duties of his office either with or without compensation, pending final determination of the inquiry. If the Commission recommends suspension, such recommendation shall have incorporated therein a record of the proceedings of the Commission in relation to the recommendation.

RULE 9. ANSWER AND MOTIONS

(a) Within 20 days after service of the Notice of Formal Charges, the judge may file an Answer. If the judge desires that all hearings be held in the county of his residence, he shall so demand in writing at the time of filing his initial answer.

(b) There shall be a motion Committee with the power to dispose of all pre-trial motions. Such Committee shall be composed of the Chairman and two judges appointed by the Chairman. The Committee's disposition shall be subject to review at the Commission's next ensuing meeting.

RULE 10. FILING

(a) Upon the filing of the Notice of Formal Charges against a judge with the Clerk of the Supreme Court of Florida, the Notice of Formal Charges and all subsequent proceedings before the Commission shall be public.

(b) The original of all pleadings subsequent to the Notice of Formal Charges shall be filed with the Clerk of the Supreme Court

of Florida, which office is designated by the Commission for receiving, docketing, filing and making such records available for public inspection. A duplicate original of all pleadings filed in the proceeding shall be served on each party, with a copy to the Commission office.

RULE 11. SETTING FOR HEARING

After the filing of an Answer or the expiration of the time for its filing, the Commission shall set a time and a place for a hearing and shall give notice of such hearing at least 20 days prior to the date set. If the judge timely requests that hearing(s) be held in the county of his residence, it shall be so held unless the Commission, by an affirmative vote of at least nine (9) members, determines otherwise.

RULE 12. PROCEDURE

(a) In all formal proceedings, the Florida Rules of Civil Procedure shall be applicable except as otherwise provided.

(b) Counsel shall, upon written demand of a party or counsel of record, promptly furnish the following:

The names and addresses of all witnesses whose testimony the Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the Commission which are relevant to the subject matter of the hearing and which have not previously been furnished. When good cause is shown this rule may be waived.

RULE 13. HEARING

At the time and place set for hearing, the Commission may proceed with the hearing whether or not the judge has filed an Answer or appears at the hearing.

RULE 14. DISABILITY

Upon receiving information that a judge is suffering a possible physical or mental disability which seriously interferes with the performance of his judicial duties, the Commission, upon the vote of nine members, may order the judge to submit to a physical and/or mental examination. If the judge fails to submit to such examination within the time ordered, the Commission may recommend to the Supreme Court that the judge be suspended without compensation until such time as the judge complies with the Commission's order.

RULE 15. EVIDENCE

At a hearing before the Commission, legal evidence only shall be received and oral evidence shall be taken only on oath or affirmation.

RULE 16. PROCEDURAL RIGHTS OF JUDGE

(a) A judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by attorney(s), and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

(b) When a transcript of the trial testimony has been prepared at the expense of the Commission, a copy thereof shall be furnished without cost to the judge. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at his expense.

(c) If the judge is adjudicated incompetent, the Commission shall appoint an attorney ad litem unless the judge has a guardian who will represent him. The guardian or attorney ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules

provide for the serving or giving notice or sending any matter to the judge, a copy of such notice or matter also shall be served, given or sent to the guardian or attorney at litem.

RULE 17. AMENDMENTS TO NOTICE OR ANSWER

The Commission may in the interest of justice allow or require amendments to the Notice of Formal Charges and may allow amendments to the Answer. In case such amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

RULE 18. EXTENSION OF TIME

The Chairman of the Commission may extend the time for filing an Answer or for the commencement of a hearing before the Commission.

RULE 19. HEARING ADDITIONAL EVIDENCE

The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of the hearing and shall indicate matters on which the evidence is to be taken. A copy of such order shall be sent by mail at least 10 days prior to the date of the hearing.

RULE 20. COMMISSION VOTE

After conclusion of the hearing and consideration of the issues presented for decision, the Commission shall first determine by vote the judge's guilt or innocence of the formal charges. If the Commission determines by an affirmative vote of not less than nine members that the judge is guilty of one or more of the charges so specified, it shall then proceed to determine the discipline to be recommended. Failure to recommend the imposition of a penalty

by the affirmative vote of not less than nine members shall constitute a dismissal of the proceedings.

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RULE 21. CERTIFICATION OF COMMISSION RECOMMENDATIONS TO SUPREME COURT

Upon dismissal by the Commission of the formal charges, the Commission shall promptly file a copy of the dismissal order certified by the Chairman, General Counsel or executive director of the Commission in the office of the Clerk of the Supreme Court of Florida. Upon making a determination recommending discipline, retirement, or removal of a judge, the Commission shall promptly file a copy of the recommendation certified by the Chairman, General Counsel or executive director of the Commission, together with a transcript and the findings and conclusions, with the Clerk of the Supreme Court and shall promptly mail to the judge and to his attorney(s) notice of such filing, together with a copy of such recommendations, findings, and conclusions.

RULE 22. REVIEW OF COMMISSION PROCEEDINGS

To the extent necessary to implement this rule, the Florida Appellate Rules shall be applicable to reviews of Commission proceedings by the Supreme Court. (Fla.App. Rule 9.520)

RULE 23. SUBPOENAS

Subpoenas for the attendance of witnesses and the production of documentary evidence in any proceedings shall be issued as follows:

(a) **Judicial Qualifications Commission.** Subpoenas for the attendance of witnesses and the production of documentary evidence for discovery, and for the appearance of any person before the Commission or any member, may be issued by any member or the General Counsel of the Commission, and be served in the

manner provided by law for the service of witness subpoenas in a civil action.

(b) **Contempt.** Any person who, without adequate excuse, fails to obey such a subpoena served upon him may be cited for contempt of the Commission in the manner provided in these rules.

RULE 24. CONFIDENTIALITY OF PROCEEDINGS

(a) Until formal charges against a judge are filed by the Commission with the Clerk of the Supreme Court of Florida, all proceedings by or before the Commission shall be confidential. Upon a finding of probable cause and the filing by the Commission with said Clerk of such formal charges against a judge, such charges and all further proceedings before the Commission shall be public.

(b) All notices, papers and pleadings mailed to a judge prior to formal charges being instituted shall be enclosed in a cover marked "confidential".

(c) Every witness in every proceeding under these Rules shall be sworn to tell the truth and not to disclose the existence of the proceeding, subject matter or the identity of the judge until the proceeding is no longer confidential under these Rules. Violation of this oath shall be an act of contempt of the Commission.

(d) Violation of these Rules by a member of the Commission shall subject him after written notice and hearing, to removal from office by an affirmative vote of seven (7) members of the Commission and shall constitute contempt of the Commission which may be enforced by appropriate proceedings in the Supreme Court of Florida.

RULE 25. INTERESTED PARTY

A judge who is a member of the Commission or of the Supreme Court shall be disqualified from participation in such

capacity in any proceeding involving his own discipline, retirement or removal.

RULE 26. DISQUALIFICATION OF MEMBERS OF THE COMMISSION

(a) Whenever a judge against whom formal proceedings have been instituted, as provided in these Rules, shall make and file with the Commission an affidavit that he fears he will not receive a fair hearing before the Judicial Qualifications Commission on the charges because of the prejudice of one or more members of the Commission against him, and the facts stated as the basis for making the said affidavit shall be supported in substance by affidavit of at least two reputable citizens of the State of Florida not of kin to the judge or his attorney, or if any member of the Commission shall voluntarily recuse himself, such member or members of the Commission shall proceed no further therein and shall be disqualified form hearing said charges. Such affidavit shall state the facts and the reasons for the belief that any such prejudice exists, shall specify the member(s) of the Commission allegedly prejudiced, and shall be filed not more than 15 days after service of the Notice of Formal Charges upon the judge charged. The Commission shall make ad hoc appointments of a person or persons to take the place of the member or members of the Commission so disqualified, but each member so disqualified may participate in the action of the Commission in making such ad hoc appointments. Each ad hoc appointee shall be from the same category as the disqualified member(s) set forth in Section 12(a) of Article V of the Constitution of the State of Florida. The judge may within 15 days after receiving notice

of any ad hoc appointment, file a like affidavit as to said appointee which shall be supported in substance by affidavit of two citizens as set forth above, in which event said ad hoc appointee shall not be disqualified on account of alleged prejudice against said judge unless said appointee admits that it is then a fact that he is prejudiced against said judge, or unless a majority of the Commission, which may include any ad hoc appointee, holds that said

appointee is prejudiced against the judge: in which event the same ad hoc appointment procedure set forth above shall be followed until a qualified person has been appointed.

(b) A judge moved against by the Commission may, by affidavit, suggest the disqualification of a member or members of the Commission unsupported by two citizens, but in such event the determination of the matter of disqualification shall be by majority vote of the Commission unless the person sought to be disqualified voluntarily recuses himself.

RULE 27. CONTEMPT

Should any witness fail, without justification, to respond to the lawful subpoena of the Commission or, having responded, fail or refuse to answer all inquiries or to turn over evidence that has been lawfully subpoenaed, or should any person be guilty of disorderly or contemptuous conduct before any proceeding of the Commission, a motion may be filed in the name of the Commission before the Circuit Court of the County in which the contemptuous act was committed, alleging the specific failure on the part of the witness or the specific disorderly or contemptuous act of the person which forms the basis of an alleged contempt of the Commission. Such motion shall pray for the issuance of an order to show cause before the Circuit Court why the Circuit Court should not find him in contempt of the Commission and he should not be punished by the Court therefor. The Circuit Court shall issue such orders and judgments therein as the Court deems appropriate.

DOCUMENT 29

Listing of Judicial Disciplinary Codes and Procedures by State

State	Applicable Procedure	Applicable Code
Ala.	Ala. Const. Art. VI, §6.17	Cannons of Judicial Ethics
Ariz.	Ariz. Const. Art. VI.1, §1-6	Code of Judicial Conduct
Ark.*	Ark. 5.A. §16-10-302	Ark. Code of Judicial Conduct
Cal.	Cal. Const. Art. VI, §8, §18 (See 537 p. 2d 898, 918 fn 22)	Cal. Code of Judicial Conduct
Colo.	Colo. Const. Art. VI, §23	Colo. Code of Judicial Conduct
Del.	Del. Const. Art. IV, §37	Del. Judges Code of Judicial Conduct
Ga.	Ga. Const. Art. VI, §7 ¶6	Code of Judicial Conduct
Idaho	Idaho Code Annot. 1-2101	Idaho Code of Judicial Conduct
Ill.	Ill. Const. Art. VI, §15 b-g Ill. S.Ct. Rule 61 et seq.	Code of Judicial Conduct
Ind.	Ind. S.A. 33-2.1-5-1 et. seq.	Code of Judicial Conduct
Iowa	Iowa C.A. 602.2101 et seq.	Iowa Code of Judicial Conduct
Kan.	Kan. S.Ct. R. 602-623	Code of Judicial Conduct
Ky.	Ky. S.Ct. R 4.000 et. seq.	Code of Judicial Conduct

La.	La. Const. Art. V, §25	Code of Judicial Conduct
Mass.	Mass. Gen. L.A. §211 C 1-11	Code of Judicial Conduct
Mich.	Mich. Const. Art. VI, §30	Code of Judicial Conduct
Minn.	Rules of Bd. on Judicial Standards	Code of Judicial Conduct
Miss.	Miss. Const. Art. VI, §177A	Code of Judicial Conduct
Mo.	Mo. Const. Art. V, §24	Code of Judicial Conduct
Mont.	Mont. Const. Art. VII, §11	Cannons of Judicial Ethics
NY	Rules of the Chief Adm. Judge 100.1 et. seq.	Judicial Conduct
N.C.	N.C. S.A. §7A-375 et. seq.	Code of Judicial Conduct
N.D.	N.D. Century Code, Ch. 27-23-01	Rules of Judicial Conduct
Ohio	S.C.R. for Gov. Judiciary of Ohio Rule 1 et. seq.	Code of Judicial Conduct
Okla.	Okla. Const. Art. VIIA, § let. seq.	Code of Judicial Conduct
Pa.	Pa. Const. Art. V, §18	Code of Judicial Conduct

R.I.	Gen. L. of R.I. Ch. 16, §8-16-1 et. seq. R.I. S.Ct. R. Art. VI, Rule 1	Code of Judicial Conduct
S.C.	S.C. S.Ct. R. 33, 34	Code of Judicial Conduct
S.D.	S.D. Codified Laws, Ch. 16, §1A-1 et. seq.	S.D. Code of Judicial Conduct
Tenn.*	Tenn. Code Annot., Ch. 5, §17-5-101 et. seq.	Code of Judicial Conduct
Utah	Utah Code Annot. §78-7-27 et seq.	Code of Judicial Conduct
Va.	Code of VA, Ch. 4.1, §2.1-37.1 et. seq.	Cannons of Judicial Conduct
Wash.	Rev. Code of Wash. Annot., §2.64.010 et. seq.	Code of Judicial Conduct
W.Va.	Rules of Judicial Disc. P. R1 et. seq.	Code of Judicial Conduct
Wyo.	Wyo. Jud. Supervisory Comm. Rules R1 et. seq.	Code of Judicial Conduct

* The procedure in Arkansas and Tennessee differs somewhat inasmuch as the final recommendation for discipline must be approved by the general assembly as opposed to the state's highest court.